

INSTRUCTIONS TO PROPOSERS

**Washington State Department
of Transportation**

*****I-5/Yesler Way to NE
117th St. – Pavement, Deck,
and Expansion Joints***
Project**

**ISSUED:
March 6, 2023**

**PROPOSALS DUE:
June 28, 2023**

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1 General Information

1.1 Introduction

The Washington State Department of Transportation (WSDOT) will use a two-phase process to select a design-build contractor (“Design-Builder”) to deliver the ***I-5/Yesler Way to NE 117th St. – Pavement, Deck, and Expansion Joints Project*** (the “Project”) described in the Contract. During the first phase of the procurement, WSDOT determined the short list of Proposers for the Project based on Statements of Qualifications (SOQs) it received in response to its Request for Qualifications (RFQ), dated ***August 29, 2022***. This Request for Proposal (RFP) is issued as part of the second phase of the procurement.

The RFP documents consist of these Instructions to Proposers (ITP); the General Provisions; the Technical Requirements; the Contract Form, which will be conformed to include information based on the successful Proposer’s Proposal and signed by WSDOT and the Design-Builder; and certain other documents identified in Appendix A of the Contract.

WSDOT invites the SOQ submitters who have been advised that they are on the short list (Proposers) to submit electronic competitive Proposals (Proposals) for design and construction of the Project, as more specifically described in this RFP. WSDOT will award the Contract for the Project (if at all) to the responsive and responsible Proposer offering a Proposal that meets the standards established by WSDOT, and that is determined by WSDOT to provide the best value to WSDOT. The process for determining the Apparent Best Value Proposer includes a review of the pass/fail (P/F) requirements; an assessment of the quality of the Proposer’s Technical Proposal; and the Proposer’s Price Proposal. WSDOT will accept Proposals only from short listed Proposers.

The Design-Build process is paperless in accordance with Executive Order E 1066.00, Executive Order E 1010, and Revised Code of Washington (RCW) 19.360. Consequently, within all design-build documents, each occurrence of the term Written shall be deemed to mean an electronic communication (see definition of Written in Section 1-03.1 of the *General Provisions*). Additionally, references to “signature” shall be deemed to refer to either electronic signature or Digital Signature, depending on context.

1.1.1 Title VI Assurances

WSDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises (DBEs) will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

1.2 *Definitions*

Capitalized terms used in the ITP and not otherwise defined herein, shall have the meanings set forth in the *General Provisions*.

1.3 *Scope of Work*

The Project description is provided in Section 2.1, *General Information*, of the Technical Requirements (TR). The Work includes all services, labor, material, and equipment necessary to design and build the Project in accordance with the Contract.

Proposers are advised that this RFP was developed to organize and consolidate the specifications and design and construction criteria for all Project components. However, the TR do not specifically describe every detail of the Work required. It is each Proposer's responsibility to review all pertinent Project requirements and criteria, as contained in the entire RFP, and the Proposer selected as the Design-Builder must perform its obligations in accordance with the requirements of the entire RFP. The Design-Builder shall not rely on the physical description contained in the Contract to identify all of the Project components. The Design-Builder shall determine the full scope of the Project through a thorough examination of the RFP, the Project Site, and any reasonable inferences to be gathered from each.

1.3.1 *Basic Configuration*

The Basic Configuration is defined in Section 1-01 of the *General Provisions*. The Proposal must be consistent with the Basic Configuration and the Contract, subject only to such changes as may have been approved by WSDOT in accordance with the Alternative Technical Concepts (ATCs) process described herein.

1.3.2 *Conceptual Plans and Reference Documents*

The Reference Documents contained in the RFP (including those portions of the Conceptual Design that do not establish the Basic Configuration elements) are provided for informational purposes to assist the Proposers in preparing their Proposals, but the Reference Documents do not represent requirements binding on the Design-Builder. WSDOT makes no representation or warranty as to the accuracy, adequacy, applicability, or completeness of the Reference Documents. Except to the extent set forth to the contrary in the Contract, reliance upon the Reference Documents shall be at the Proposer's risk, and WSDOT shall have no liability or obligation as a result of the inaccuracy, inadequacy, inapplicability, or incompleteness of the Reference Documents, regardless of the contents thereof.

Each Proposer is responsible for reviewing the Conceptual Plans in advance of submitting its Proposal, for purposes of assessing their adequacy for meeting the Contract requirements and determining whether any changes are necessary or advisable. The Design-Builder shall be solely responsible for Project design and construction in accordance with the Contract.

1.3.3 Utility Relocations

Section 1-07.17 of the *General Provisions* and Section 2.10, *Utilities and Relocation Agreements*, of the TR (together with any documents referenced therein) set forth the rights and obligations of WSDOT, the Design-BUILDER, and any Utility Owner with respect to Relocation and Relocation Costs. Price Proposals shall be consistent with the requirements of Section 1-07.17 of the *General Provisions*. WSDOT funds are not available for Relocation Costs arising out of the Relocation of a Utility for which the Utility Owner has Cost Responsibility. Proposers are required to certify that they have not included in their Price Proposal any such Relocation Costs. Proposers are reminded that the circumstances under which the Design-BUILDER may obtain additional compensation for Relocation Costs under the Contract are extremely limited.

1.3.4 Project Goals

WSDOT has established the following Project goals:

Disadvantaged Business Enterprise (DBE) Participation

Meet or exceed DBE requirements throughout the life of the Project with an integrative approach to maximize DBE participation.

*****Project Goal 1: Minimize Impacts**

1a. Minimize impacts to traffic by maintaining highway and local street operations and minimizing the number of traffic shifts, full roadway closures, ramp closures, and lane closures through safe, effective Maintenance of Traffic strategies and construction staging.

1b. Minimize impacts to local residents, businesses, and communities, including but not limited to, noise, vibration, dust, and construction lighting.

Goal 2: Communications with the Public

Proactively provide timely and effective communications aimed at notifying the public about construction work, freeway and ramp closures, traffic delays, alternate routes, to minimize impacts from construction activities.

Goal 3: Project Management

3a. Through effective project management, deliver a successful design-build project by proactively identifying and managing Project risks and collaborating with WSDOT and Project stakeholders to identify issues early and efficiently resolve issues at the Project level.

3b. Develop a plan for removing people experiencing homelessness within the Project limits that implements the State, King County, and City of Seattle requirements for illegal encampment removal.

Goal 4: Project Safety

Develop and administer an effective safety program to ensure both public and Project worker safety.***

1.3.5 Validity Period; Notice to Proceed

Proposals shall remain valid for 90 Calendar Days after the Proposal Due Date. WSDOT anticipates that Notice to Proceed (NTP) will be issued shortly after Contract execution, but WSDOT may defer issuance of NTP for up to 30 Calendar Days after Contract execution.

1.3.6 Procurement Schedule

Action	Date
Issue RFP	***March 6, 2023***
Voluntary Proposer Meeting	***March 15, 2023***
ATC Submittal Deadline	***May 24, 2023***
Deadline for Submitting Proposer's Questions	*** May 24, 2023***
Deadline for WSDOT Response to Proposer's Questions	***June 12, 2023***
Proposals Due	***June 28, 2023***
Announce Apparent Best Value Proposer	***August 16, 2023***
Estimated NTP	***September 19, 2023***

1.3.7 Project Cost

The estimated Proposal Price is approximately ***\$265,000,000 to \$310,000,000***.

1.3.8 Minority, Small, Veterans, and Women's Business Enterprise Participation

This section is intentionally omitted.

1.3.9 Disadvantaged Business Enterprise Participation Requirements

The DBE requirements of 49 CFR Part 26 apply to this Project. To be eligible for award of this Contract, each Proposer shall complete Form V, *DBE Performance Plan Template*, and submit a DBE Performance Plan in Appendix D as part of a responsive Proposal.

The DBE Performance Plan will be considered in the technical evaluation scoring.

1.3.9.1 Disadvantaged Business Enterprise Goals

WSDOT has established DBE Goals in the amount of ***16*** percent of the design portion and ***20*** percent of the construction portion of this Project. Design elements include technical reports/memoranda, design survey, geotechnical testing and engineering, Utilities investigation and design, pavement

1 design, structures design (bridges and retaining walls), drainage design,
2 stormwater/water quality management plans, landscape architecture and design,
3 civil roadway design, traffic engineering, lighting design, and Quality Assurance
4 (QA). Unless a modification is requested and approved, all elements of the Project
5 not included in the design elements shall be considered part of the construction
6 elements.

7 **1.3.9.2 Federal Small Business Enterprise Goals**

8 ***This section is intentionally omitted.***

9 **2 Procurement Process**

10 **2.1 Confidentiality and Conflicts of Interest**

11 **2.1.1 Organizational Conflicts of Interest**

12 Organizational conflicts of interest means that because of other activities or
13 relationships with other persons or entities, a Person or entity:

- 14 • Is unable or potentially unable to render impartial assistance or advice to
15 WSDOT
- 16 • Is or might be otherwise impaired in its objectivity in performing the Contract
17 Work
- 18 • Has an unfair competitive advantage

19 The integrated nature of the design-build project delivery method creates the
20 potential for organizational conflicts of interest. Disclosure, evaluation,
21 neutralization, and mitigation of these conflicts and of the appearance of conflicts,
22 is in the interests of the public, WSDOT, and the consulting and construction
23 communities.

24 WSDOT will take steps to ensure that individuals involved in the preparation of
25 the procurement package, evaluation of each SOQ and Proposal, and Design-
26 Builder selection are not influenced by organizational conflicts of interest, and
27 that no Proposer is given an unfair competitive advantage over another.

28 Attention is directed to the requirement for disclosure of organizational conflicts
29 of interest set forth in 23 CFR Section 636.116(a)(2), WSDOT Secretary's
30 Executive Order E 1059.00, and the WSDOT *Organizational Conflicts of Interest*
31 *Manual*.

32 As stated in the WSDOT *Organizational Conflicts of Interest Manual*, it is the
33 Proposer's responsibility to avoid, neutralize, or mitigate potential conflicts of
34 interest. Proposers are required to disclose all relevant facts concerning any past,
35 present, or currently planned interests, activities, or relationships which may
36 present organizational conflicts of interest. Proposers shall state how their
37 interests, activities, or relationships, or those of the chief executives, directors,
38 Key Personnel, or any proposed Consultant, Subconsultant at any tier, Contractor,

or Subcontractor at any tier may result in, or could be viewed as, organizational conflicts of interest prior to or in the Proposal, in accordance with WSDOT Secretary's Executive Order E 1059.00 and the WSDOT *Organizational Conflicts of Interest Manual*. Submit Form R, *Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan* and Form S, *Organizational Conflicts of Interest Certification*.

If organizational conflicts of interest are determined to exist, WSDOT may, at its sole discretion, offer the Proposer the opportunity to avoid, neutralize, or mitigate the organizational conflicts of interest; disqualify the Proposer from further participation in the procurement; cancel this procurement; or, if award has already occurred, declare the Proposal nonresponsive and award the Contract to the next responsive Apparent Best Value Proposer, or cancel the Contract. If the Proposer was aware of organizational conflicts of interest prior to award of the Contract and did not disclose the conflict to WSDOT, WSDOT may terminate the Contract for default.

WSDOT has retained the following consulting firms to provide guidance in preparing the RFQ, the RFP, and advice on related financial, contractual, and technical matters:

- ***Applied Professional Services, Inc.
- HNTB Corporation
- NVL Laboratories, Inc.
- Ott Sakai and Associates, LLC***

These firms are prohibited from joining any Proposer's team or otherwise assisting any Proposers in connection with the procurement process.

2.1.2 Confidentiality During Evaluation and Selection Process

Subject to Applicable Law, WSDOT will use reasonable efforts to maintain confidentiality during the Proposal process. The foregoing shall not preclude WSDOT from using, in its sole discretion, ideas contained in the Proposals of any unsuccessful Proposer, subject to WSDOT's payment of the stipend in accordance with Section 7 of this ITP.

2.2 Examination of Request for Proposal

Each Proposer shall be solely responsible for reviewing and examining, with appropriate care, all documents included in the RFP, including any supplements, addenda, and clarification notices issued by WSDOT; requesting an explanation or interpretation of any discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that the Proposer fails to understand; and investigating and informing itself of any and all Project conditions and circumstances that may in any way affect the contents of the Proposal or the performance of the Work after Contract award. The Proposer bears the risk of all consequences of any failure to thoroughly investigate all relevant Project and Project Site conditions and circumstances as described herein.

1 **2.3 *Communications***

2 The WSDOT Technical Point of Contact for receiving Proposer questions, ATC
3 submittals, and all other communications about the Project and the RFP (other
4 than submission of the Proposals) is as follows:

5 ***Kyengo Ndile, PE, PMP
6 NWR Sno-King Design Office – Project Engineer
7 (206) 440-4272
8 Email: projxl6272@wsdot.wa.gov***

9 Except for communications expressly permitted by the RFP, the Proposer shall
10 not discuss the RFP with other WSDOT staff members or WSDOT consultants
11 involved with the Project before Contract execution or cancellation of the RFP.
12 Any Proposer engaging in such prohibited communications may be disqualified at
13 the sole discretion of WSDOT.

14 Proposals shall be submitted to Jenna Kemp in accordance with Section 3 of this
15 ITP.

16 **2.4 *Submission of Proposer Questions***

17 Any Proposer questions regarding a perceived discrepancy, deficiency, ambiguity,
18 error, or omission contained in the RFP documents, or of any provision that the
19 Proposer otherwise fails to understand regarding the RFP documents or the
20 Project, must be submitted by email to the WSDOT Technical Point of Contact by
21 the deadline for questions set forth in Section 1 of this ITP. Requests for
22 clarification or interpretation must specifically reference the Sections and the page
23 numbers of the RFP documents, unless such request is of a general application.
24 Telephone requests will be accepted, provided that the requests are followed by
25 an email to the WSDOT Technical Point of Contact at the address specified in
26 Section 2.3 of this ITP. WSDOT will provide responses to questions as described
27 in Section 2.5 of this ITP.

28 **2.5 *Request for Proposal Addenda and Responses to Questions***

29 WSDOT may issue addenda to the RFP. WSDOT will provide responses to all
30 questions received in accordance with this Section. All addenda and responses
31 will be posted on the WSDOT Contract Ad & Award website at:
32 ***[https://wsdot.wa.gov/business-wsdot/contracting-opportunities/i-5-yesler-way-](https://wsdot.wa.gov/business-wsdot/contracting-opportunities/i-5-yesler-way-ne-117th-st-pavement-deck-and-expansion-joints-project)
33 ne-117th-st-pavement-deck-and-expansion-joints-project***

34 WSDOT will send an email notification to the interested parties list as soon as
35 each addendum, response, or group of responses is issued. Notwithstanding the
36 foregoing, WSDOT will communicate with each Proposer on a one-on-one basis
37 with regard to questions regarding ATCs that WSDOT determines are appropriate
38 for confidential communications.

39 A final set of questions and answers will be compiled and distributed prior to the
40 Proposal Due Date. Responses to questions are not considered part of the

Contract, and shall not be relevant in interpreting the Contract, except as they may clarify provisions otherwise considered ambiguous.

If WSDOT determines, in its sole discretion, that any interpretation or clarification resulting from the question-and-answer process requires a change in the RFP documents, WSDOT will issue an addendum making such change. WSDOT will not be bound by, and the Proposer shall not rely on, any communication or representation regarding the RFP documents, unless it is an addendum to this RFP and is not superseded by a later addendum to this RFP, and except to the extent provided above regarding responses to questions.

2.6 *Right of Way Access*

Prior to award of the Contract, if the Proposer determines that field investigations are necessary to properly bid the Work, the Proposer shall request Right of Way (ROW) access from the WSDOT Engineer prior to performing any field investigations. The Proposer shall obtain an *Application for General Permit* (Appendix R of the Contract) from WSDOT. Applicable forms shall be submitted to the WSDOT Engineer for approval 7 Calendar Days in advance of the requested field investigation date.

The Proposer shall coordinate with the WSDOT Engineer to determine if traffic control is necessary. When traffic control is necessary, proposed Traffic Control Plans shall be submitted for approval a minimum of 7 Calendar Days in advance and include the hours and Calendar Days the Proposer will be in WSDOT's ROW. As guidance, Section 2.22, *Maintenance of Traffic*, of the TR provides the allowable Contract Work hours and lane closure times.

The Proposer shall coordinate with the WSDOT Engineer to access the property owned by WSDOT available for use as a Project office.

2.7 *Geotechnical and Hazardous Materials Information*

2.7.1 Geotechnical Baseline Report

WSDOT has prepared a Geotechnical Baseline Report (GBR) in Appendix G of the Contract. Each Proposer is solely responsible for reviewing the GBR and incorporating the baselines into their Proposal. The GBR shall not be used for design.

2.7.2 Geotechnical Data Report

This section intentionally omitted.

2.7.3 Additional Geotechnical Investigation and Analysis

Prior to award of the Contract, if the Proposer determines that additional geotechnical or subsurface investigations are necessary to properly bid the Work, it is the responsibility of the Proposer to perform such investigation and analysis at its sole expense. Prior to performing any field investigations, the Proposer shall obtain ROW access approval as detailed in Section 2.6 of this ITP from WSDOT.

1 Such requests for investigations may take place at any time before or after
2 submission of the Proposal. All subsurface investigations, including sampling and
3 laboratory testing, shall be performed in accordance with the WSDOT
4 *Geotechnical Design Manual* (Appendix D), the 1988 *AASHTO Manual on*
5 *Subsurface Investigations*, American Association of State Highway and
6 Transportation Officials (AASHTO) standards, and American Society for Testing
7 and Materials (ASTM) standards. No such investigations shall be performed
8 without the prior written consent of WSDOT, for which consent may be granted
9 or denied at WSDOT's sole discretion.

10 **2.7.4 Hazardous Materials Report and Good Faith Investigation**

11 WSDOT has prepared a Hazardous Materials Report (Appendix E) and conducted
12 a Good Faith Investigation (GFI) for Asbestos Containing Material or Presumed
13 Asbestos Containing Material (Appendix E).

14 Refer to Section 2.8, *Environmental*, for information regarding the Hazardous
15 Materials Report and the results of the GFI.

16 **2.7.5 Additional Hazardous Materials Investigation**

17 Prior to award of the Contract, if the Proposer determines that additional
18 hazardous materials investigations are necessary to properly bid the Work, it is
19 the responsibility of the Proposer to perform such investigation at its sole
20 expense. Prior to performing any field investigations, the Proposer shall obtain
21 ROW access approval as detailed in Section 2.6 of this ITP from WSDOT. Such
22 requests for investigations may take place at any time before or after submission
23 of the Proposal. All hazardous materials investigations shall be performed in
24 accordance with the WSDOT *Environmental Manual* (Appendix D). No such
25 investigations shall be performed without the prior written consent of WSDOT,
26 for which consent may be granted or denied at WSDOT's sole discretion.

27 **2.8 Alternative Technical Concepts**

28 To promote innovation by Proposers and to maintain flexibility in the
29 procurement process, WSDOT will allow Proposers to submit to WSDOT for
30 consideration ATCs that modify the Basic Configuration or other Contract
31 requirements. In order to be approved, an ATC must be deemed, in WSDOT's sole
32 discretion, to provide a Project that is "equal or better" on an overall basis than the
33 Project would be without the proposed ATC. Concepts that simply delete scope, lower
34 performance requirements, lower standards, or reduce Contract requirements are not
35 acceptable as ATCs.

36 **2.8.1 Pre-Proposal Submittal of Alternative Technical Concepts**

37 To be considered, a proposed ATC must be submitted to WSDOT no later than
38 ***5:00:00 p.m.*** Pacific Time (PT) on the date set forth in Section 1.3 of this
39 ITP. This deadline also applies to revised submissions in response to WSDOT's
40 comments. Each ATC submittal package shall be submitted via email in a single

PDF file, shall include line numbers on all narrative pages, and shall address all of the following elements:

- Brief Description: A few words identifying the ATC, for future reference.
- Detailed Description: A detailed description and schematic drawings of the configuration of the ATC or other appropriate descriptive information including, if appropriate, product details, and specifications.
- Usage: A description of where and how the ATC would be used on the Project.
- Subsurface Investigation: Present a geotechnical investigation related to the ATC, including all supporting documentation. Said investigation shall include the Proposer's geotechnical basis of design.
- Hazardous Materials Investigation: Present a hazardous materials investigation related to the ATC.
- Proposed RFP modifications: References to all requirements of the RFP that are modified by the proposed ATC with an explanation of the nature of the modification from said requirements and a request for approval of such modifications. Use addendum and tracked changes format.
- Design Analyses: If the ATC requires "Design Analysis" as defined in the WSDOT *Design Manual* (Appendix D), the submittal package shall include documentation for the design analysis which conforms to the WSDOT *Design Manual*. No design analysis shall be incorporated into an ATC without receiving WSDOT approval, and Federal Highway Administration approval as applicable.
- Analysis: An analysis justifying use of the ATC and demonstrating how the Project with the ATC is "equal or better" than the Project without the ATC. The "equal or better" analysis shall address the following:
 - a) Functionality, which when appropriate shall require a traffic operational analysis, and Complete Streets analysis (pedestrian and bicycle level of traffic stress)
 - b) Structural adequacy
 - c) Safety
 - d) Comparison of life cycle costs including repair and maintenance
 - e) Aesthetics
 - f) Impacts on construction traffic
 - g) Effect on or changes to environmental commitments identified in the RFP
 - h) Impacts to surrounding and adjacent communities, including EJ and LEP populations
 - i) Changes needed in the location, length, height, or number of noise walls

j) Impact on Utilities and rail

k) Discussion of additional ROW or easements required

Do not submit any data indicating the effect that approval of the ATC will have on the Proposal Price.

If a Proposer wishes to make any announcement or disclosure to third parties (such as other governmental agencies that may have an interest in the ATC) concerning any ATC, it must first notify WSDOT of its intent to take such action, including details of the date and participants, and obtain WSDOT's prior approval to do so.

2.8.2 Pre-Proposal Review of Alternative Technical Concepts

Incomplete ATC submittal packages may be returned by WSDOT without Review and Comment. WSDOT may, at its discretion, request additional information regarding a proposed ATC, conduct One-on-One Meetings with Proposers to discuss ATCs, and establish such protocols or procedures as it deems appropriate for conducting One-on-One Meetings. Subject to the Washington Public Records Act, and to WSDOT's right to use proposed concepts following award of the Contract based on payment of the stipend, all discussions with Proposers regarding ATCs will remain confidential.

Although WSDOT reserves the right in its sole discretion to reject any ATC, ATCs specifically not eligible for approval, include the following:

- ATCs that are, in WSDOT's sole discretion, deemed not to provide a Project that is "equal or better" on an overall basis than the Project would be without the ATC.
- Any ATC that would require excessive time or cost for WSDOT to review, evaluate, or investigate.

In order to be approved, an ATC must be deemed, in WSDOT's sole discretion, to provide a Project that is "equal or better" on an overall basis than the Project would be without the proposed ATC. Potential changes to the Proposal Price will not be considered by WSDOT in the "equal or better" determination.

2.8.3 WSDOT Response

WSDOT will respond to all ATCs within 14 Calendar Days of ATC receipt, provided that WSDOT has received all requested information regarding the ATC. The format for response will include the ATC number and a brief description, and will be limited to one of the following:

1. The ATC is approved.
2. The ATC is not approved.
3. The ATC is not approved in its present form, but may be reconsidered for approval upon satisfaction, in WSDOT's sole discretion, of certain identified conditions that must be met or certain clarifications or

modifications that must be made as described hereunder. The Proposer shall not have the right to incorporate this ATC into the Proposal unless and until the ATC has been resubmitted within the time limits in the ITP, with the conditions stated below satisfied, and WSDOT has unconditionally approved the revised ATC.

4. The submittal does not qualify as an ATC but appears eligible to be included in the Proposal without an ATC (i.e., the concept appears to conform to the Basic Configuration and to be consistent with other Contract requirements).

WSDOT approval of an ATC extends solely to the information contained in the ATC submittal.

2.8.4 Incorporation into Proposal

The Proposer may include any or all approved ATCs in its Proposal. The Proposal Price shall reflect any incorporated ATCs. Except for incorporating approved ATCs, the Proposal shall not otherwise contain exceptions to or variations from the requirements of the RFP. If WSDOT responded to an ATC by stating that certain conditions must be met prior to granting approval, the Proposer shall not have the right to incorporate the ATC into the Proposal unless and until the ATC has been timely resubmitted with the conditions satisfied and WSDOT has approved the ATC in writing. Once an ATC has been approved, only the entire ATC is eligible for inclusion into the Proposal. The inclusion of partial ATCs into a Proposal is not allowed.

WSDOT's geotechnical investigation and subsurface Utilities investigation conducted for this Project and included in the RFP was based on the Conceptual Design and Basic Configuration. Therefore, the geotechnical information and subsurface Utilities information provided in the RFP does not purport to represent Site conditions for an ATC.

Consequently, with respect to geotechnical investigations, the Proposer is responsible for conducting its own geotechnical investigation prior to the Proposal Due Date, for changes to the Conceptual Design or Basic Configuration, if any, that are approved as part of an ATC. When conducting the geotechnical investigation, Design-Builder may take into consideration the geotechnical information provided in the RFP to supplement its own analysis as applied to the Design-Builder's design addressed in the ATC. The Proposer's geotechnical investigation included in the ATC submittal, once accepted by WSDOT, will form the basis upon which different site conditions will be addressed under the Contract for Work implemented as part of an ATC.

With respect subsurface Utilities, WSDOT has performed preliminary investigations of existing Utilities located within the Project's ROW, as designated in the RFP absent modification by an ATC. The Proposer will be responsible for conducting its own investigation relating to all Utilities located outside of said ROW.

1 The Design-Builder shall conduct all Work necessary to update the Basis of
2 Design and the Alternative Comparison Table for the Project should any revisions
3 be necessary due to an ATC.

4 **2.9 Change in Proposer's Organization**

5 If a Proposer wishes to change its form of organization from that described in its
6 SOQ, or if it wishes to remove any Major Participant or Key Personnel (as such
7 terms are defined in the RFQ) from those identified in the SOQ, the Proposer
8 shall obtain written approval of the change from the WSDOT Technical Point of
9 Contact as specified in this Section prior to submitting its Proposal. To qualify for
10 WSDOT's approval, the written request must demonstrate how the proposed
11 change will be equal to or better than the Major Participant or Key Personnel
12 identified in the SOQ. The written request shall include a resume (limit to two
13 pages per Person) for each Major Participant or Key Personnel and a side-by-side
14 comparison of the original Major Participant or Key Personnel (as identified in
15 the SOQ) and the proposed Major Participant or Key Personnel. For Major
16 Participants, this side-by-side comparison shall relate relevant experience to each
17 of the evaluation criteria identified in Section 7.6.2 of the RFQ. For Key
18 Personnel, this side-by-side comparison shall relate relevant experience to the
19 Project goals identified in Section 7.5.3 of the RFQ. Side-by-side comparisons
20 shall demonstrate that the proposed change is equal or better. WSDOT is under no
21 obligation to approve such requests and may approve or disapprove a portion of
22 the request or the entire request at its sole discretion.

23 **2.9.1 Liquidated Damages for Key Personnel**

24 **Key Personnel Damages** – If awarded the Contract, the Proposer shall make all Key
25 Personnel identified in the SOQ available at all times and places required under the
26 terms of the Contract and shall ensure that such Key Personnel devote all efforts
27 necessary for all periods of time necessary or required under the terms of the Contract,
28 to timely fulfill all Contract obligations.

29 If an individual filling one or more Key Personnel roles is not available for the Work
30 or does not maintain active involvement in the prosecution and performance of the
31 Work, the Proposer acknowledges that WSDOT, the Work, and the Project will suffer
32 significant and substantial damages and that it is impracticable and extremely difficult
33 to determine the actual damages that would accrue in such an event. Therefore, if for
34 any reason a substitution of Key Personnel identified in the SOQ is either requested by
35 the Proposer or replacement is required by WSDOT, the Proposer agrees to pay
36 liquidated damages in the amount identified below, per substitution, in addition to
37 obtaining the required approval of the substituted Key Personnel from WSDOT. The
38 Proposer understands and agrees that any damages payable in accordance with this
39 section are in the nature of liquidated damages and not a penalty and that such sums
40 are reasonable under the circumstances.

Key Personnel	Liquidated Damage Amount
Project Manager	***\$200,000***
Construction Manager	***\$150,000***
Work Zone Traffic Engineering Manager	***\$100,000***
Communications Manager	***\$100,000***
DBE Program Administrator	***\$100,000***

2.10 *Withdrawal of Proposal*

After submitting a Proposal to WSDOT, the Proposer may withdraw it if the Proposer submits a written request signed by an authorized representative of the Proposer.

The original Proposal may be revised and resubmitted as the official Proposal if WSDOT receives the revised Proposal before the Proposal Due Date.

WSDOT will not accept requests to revise or withdraw electronic Price Proposals. Such requests shall be furnished directly to BidExpress® and in accordance with their terms and conditions.

Any attempt by a Proposer to withdraw its Proposal after the time due on the Proposal Due Date, regardless of whether WSDOT requests a Best and Final Offer (BAFO), will result in a draw by WSDOT upon the Proposal bond.

2.11 *WSDOT's Rights*

WSDOT reserves the right, at its sole discretion, to:

- Appoint evaluation committees to review Proposals
- Investigate the qualifications of any Proposer
- Seek or obtain data from any source related to the Proposals
- Require confirmation of information furnished by a Proposer
- Hold meetings and conduct discussions and correspondence with the Proposers to seek an improved understanding and evaluation of the responses to this RFP
- Require additional information from a Proposer concerning its Proposal
- Seek and receive clarifications to a Proposal
- Require additional evidence of qualifications to perform the Work
- Modify the RFP process
- Waive minor deficiencies and irregularities in a Proposal

- Reject any or all of the Proposals
- Cancel, modify, or withdraw the RFP
- Issue a new RFP
- Issue a request for BAFOs
- Cancel a Contract signed by the Apparent Best Value Proposer but not yet executed by WSDOT
- Not issue NTP after execution of the Contract

The RFP does not commit WSDOT to enter into a Contract or to proceed with the procurement described herein. Other than the right to receive a stipend as described in Section 7 of this ITP, no unsuccessful Proposer shall be entitled to reimbursement of its costs in connection with the RFP.

2.12 *Announce Apparent Best Value Proposer*

The public opening of the sealed Price Proposal and announcement of Apparent Best Value Proposer is scheduled for 11:00:59 a.m. PT on the date set forth in Section 1.3 of this ITP. Contract Ad & Award staff will livestream the virtual public opening using this link:
<https://www.wsdot.wa.gov/biz/contaa/Contracts/default.htm>

2.13 *Award of Contract*

Typically, Contract award or Proposal rejection will occur within 60 Calendar Days after the Proposal Due Date. If the Apparent Best Value Proposer and WSDOT agree, this deadline may be extended. If they cannot agree on an extension by the deadline, WSDOT reserves the right to award the Contract to the next Apparent Best Value Proposer or reject all Proposals. WSDOT will notify the successful Proposer of the Contract award in writing.

2.14 *Bonds*

2.14.1 *Proposal Bond*

Each Proposer shall submit a Proposal bond with its Proposal in the amount of 5 percent of the Proposal Price, issued by a Surety meeting the requirements stated in this Section. The Proposal bond shall be in an electronic format via Surety2000.com or Insurevision.com. The Proposal bond shall be submitted electronically via AASHTOWare Project Bids™ software and BidExpress®. A Proposal bond shall not be conditioned in any way to modify the minimum 5 percent required. Proposals that fail to include a Proposal bond in compliance with this Section shall be deemed nonresponsive and will be rejected by WSDOT.

2.14.2 *Contract Bond*

The successful Proposer shall provide an executed Contract Bond for the full Proposal Price. This Contract Bond shall:

1. Be on WSDOT Form 272-002B, *Contract Bond - Highway Construction*, located in the WSDOT Form Catalog at:
<https://www.wsdot.wa.gov/forms/pdfForms.html>
2. Be signed by an approved Surety (or Sureties) that:
 - a. Is registered with the Washington State Insurance Commissioner
 - b. Appears on the current Authorized Insurance List in the State published by the Office of the Insurance Commissioner
3. Be conditioned upon the faithful performance of the Contract by the Design-Builder within the prescribed time
4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the Project under titles 50, 51, and 82 RCW
5. Guarantee that the Surety shall indemnify, defend, and protect WSDOT against any claim of direct or indirect loss resulting from the failure:
 - a. Of the Design-Builder (or any of the employees, Subcontractors, or lower tier Subcontractors of the Design-Builder) to faithfully perform the Contract
 - b. Of the Design-Builder (or the Subcontractors or lower tier Subcontractors of the Design-Builder) to pay all laborers, mechanics, Subcontractors, lower tier Subcontractors, material Person, or any other Person who provides supplies or provisions for carrying out the Work

WSDOT may require Sureties or Surety companies on the Contract Bond to appear and qualify themselves. Whenever WSDOT deems the Surety or Sureties to be inadequate, it may, upon written demand, require the Design-Builder to furnish additional Surety to cover any remaining Work. Until the added Surety is furnished, payments on the Contract will stop.

The Contract Bond is intended to provide protection to WSDOT for the Design-Builder's obligations with respect to the construction and post-construction phases of the Project, and to meet the requirements of RCW 39.08, et al.

2.14.3 Surety Qualifications

Bonds must be issued by a Surety with a Best's rating of at least "A-" or better and Financial Size Category of VIII or better by A.M. Best Co. The Surety shall be registered with the Washington State Insurance Commissioner and shall appear on the current Authorized Insurance List in the State published by the Office of the Insurance Commissioner.

2.15 Execution of Contract

Within 20 Calendar Days after award of the Contract, the successful Proposer shall return the signed Contract prepared by WSDOT, together with the insurance certification, Contract Bond, and any other pre-award information required by the Contract and shall be registered as a contractor in the State.

1 Until WSDOT executes the Contract, no Proposal shall bind WSDOT. No Work
2 shall begin within the Project limits or within Sites furnished by WSDOT until
3 issuance of NTP. The Design-Builder shall bear all risks for any Work begun
4 outside such areas and for any materials ordered before the Contract is executed
5 by WSDOT and NTP has been issued.

6 If the Proposer experiences circumstances beyond its control that prevents
7 execution of the Contract within 20 Calendar Days after receipt of documents,
8 WSDOT may, at its discretion, grant up to a maximum of 20 additional Calendar
9 Days for return of the executed Contract, provided WSDOT deems the
10 circumstances warrant it.

11 **2.16 *Failure to Execute Contract***

12 Failure to return the insurance certification, Contract Bond, or other pre-award
13 information required by the Contract with the signed Contract, or failure or
14 refusal to sign the Contract or failure to register as a contractor in the State, shall
15 result in a call upon the Proposal bond. If this should occur, WSDOT may then
16 award the Contract to the second Apparent Best Value Proposer or reject all
17 remaining Proposals. If the second Apparent Best Value Proposer fails to return
18 the required documents as stated above within the time provided after award of
19 the Contract, the Contract may then be awarded successively in a like manner to
20 the remaining Apparent Best Value Proposers until the above requirements are
21 met or the remaining Proposals are rejected.

22 **2.17 *Return of Proposal Bond***

23 When Proposals have been examined and corrected as necessary, Proposal bonds
24 accompanying Proposals ineligible for further consideration will be returned. All
25 other Proposal bonds will be held until the Contract has been properly executed.
26 When the Contract has been properly executed, all remaining Proposal bonds,
27 except those subject to forfeiture, will be returned.

28 **3 Proposal Delivery, Content, Format, and WSDOT Secure File** 29 **Transfer Protocol**

30 **3.1 *Submittal Requirements***

31 **3.1.1 Due Date, Time, and Electronic Location**

32 Technical Proposals and Form C, *Upset Amount Determination*, must be
33 electronically uploaded to the WSDOT Secure File Transfer Protocol (SFTP) site
34 prior to 11:59:59 p.m. (Midnight) PT, on the Proposal Due Date set forth in
35 Section 1.3 of this ITP.

36 Example instructions on how to upload the Technical Proposal to the WSDOT
37 SFTP site using the free FTP client FileZilla can be found in the online directory
38 for the Project in the folder named “Submittals”.

Proposers shall use the same Username and Password that was provided during the RFQ to access the WSDOT SFTP site. WSDOT will grant permission to the WSDOT SFTP site a minimum of 21 Calendar Days before the Proposal Due Date set forth in Section 1 of this ITP.

Only the final version of the Technical Proposal shall be uploaded to the WSDOT SFTP site. If revisions to the uploaded final Technical Proposal are necessary before the Proposal Due Date, completely replace the Technical Proposal on the WSDOT SFTP site with the revised Technical Proposal. Only a single version shall be on the WSDOT SFTP site at the Proposal Due Date. If multiple versions of a Technical Proposal are on the WSDOT SFTP site after the Proposal Due Date, it may result in a nonresponsive Proposal.

WSDOT is not responsible for any technical difficulties or network issues Proposers may encounter in accessing the WSDOT SFTP site. WSDOT recommends testing the WSDOT SFTP site and upload process prior to the Proposal Due Date.

The Price Proposal and Proposal Bond shall be submitted electronically via AASHTOWare Project Bids™ software and BidExpress® for this Project prior to 11:59:59 p.m. (Midnight) PT, on the Proposal Due Date set forth in Section 1.3 of this ITP. WSDOT will not accept Proposals by facsimile, email, or hard copy. Any Proposal that fails to meet the deadline or delivery requirement may be rejected and returned to the Proposer without having been opened, considered, or evaluated.

3.1.2 Contents of the Proposal

The Proposal shall contain the sections listed below, and shall respond fully to all applicable requirements of the RFP:

Table 3.1.2 CONTENTS OF THE PROPOSAL

TECHNICAL PROPOSAL SECTIONS 1 THROUGH ***5*** AND APPENDICES	Page Limit*
Section 1 – Executive Summary	2
Section 2 – ***Minimize Impacts***	***8***
Section 3 – ***Communications with the Public***	***5***
Section 4 – ***Project Management***	***5***
Section 5 - ***Project Safety***	***2***
Appendix A – Proposer Information and Certifications	
Form A, <i>Design-Build Proposal Form and Signature Page</i>	
Form D, <i>Contract Time/Milestone Completion Deadlines</i>	
Form E, <i>Identification of Proposer, Guarantors, Major Participants, Earthwork Subcontractors, Structures Subcontractors, and Each Subconsultant and Subcontractor Performing 20 Percent or More of the Design-Build Work</i>	
Description of Legal Structure	
Form G, <i>Non-Collusion Declaration</i>	

TECHNICAL PROPOSAL SECTIONS 1 THROUGH ***5*** AND APPENDICES	Page Limit*
Form H, <i>Certification for Federal-Aid Contracts</i>	
Form K, <i>Form of Guaranty</i>	
Form L, <i>Utility Certification</i>	
Evidence of Authorization – Powers of Attorney	
Information and Work Site Certification	
Certification Regarding Changes to Key Personnel and Major Participants	
Certification Regarding Right of Way	
Form M, <i>Stipend Agreement</i>	
Form N, <i>Stipend Invoice</i>	
Form Q, <i>Option for Use of WSDOT-Owned Property</i>	
Form R, <i>Organizational Conflicts of Interest – Disclosure and Avoidance/Neutralization/Mitigation Plan</i>	
Form S, <i>Organizational Conflicts of Interest Certification</i>	
Form T, <i>Maintenance of Traffic Milestone Reduction in the Allowable Closures</i>	
Appendix B – Resumes	2 Pages per Person
Appendix C – Details of Technical Approach and Innovations	
DBE Participation	
Appendix D - DBE Performance Plan	

*The page limits listed here are specific to the narratives and organizational charts. There is no page limit for the Preliminary Baseline Contract Schedule, plans, or other technical data provided in each section.

PRICE PROPOSAL SECTION ***6***	Page Limit
Section ***6*** – Price Proposal	
Schedule of Items (via BidExpress®)	
Proposal Bond (via BidExpress®)	

3.1.3 Format Requirements and Submission Instructions

The Technical Proposal shall be formatted as follows:

- **Language** - All information shall be in English.
- **File Type** – Technical Proposals shall be submitted as a PDF. All PDF files shall be unlocked; embedded video, audio, or multimedia shall not be used.
- **Plan Sheet PDF Files** – All PDF Plan Sheets shall be flattened.
- **File Size** – Individual file sizes shall not exceed 200 MB; files shall not be zipped.
- **Font** – Font shall be a regular style font.

- **Font Size** – Font size shall be a minimum of 12 points.
 - **Spacing** - All text shall be single-spaced.
 - **Style** – Other than minimum font size and a regular style font, heading styles and figures are not prescribed.
 - **Page Size** - Except for charts, exhibits, and other illustrative and graphical information, all information shall be on 8.5 by 11-inch portrait-oriented pages. Charts, exhibits, and other illustrative and graphical information may be on 11 by 17-inch pages. Text on 11 by 17-inch pages shall be limited to contextual information relating to charts, exhibits, and other illustrative and graphical information. Examples of contextual information include titles, labels, legends, and concise descriptive captions. The 11 by 17-inch pages will be counted as one page.
 - **Page Margins** - Page margins shall be a minimum of 0.75 inches from any page edge. No text, tables, figures, photos, or other substantive content shall extend into the margin minimum.
 - **Page Limit** - Page limits are described in Table 3.1.2. The Proposals shall include only information required by this ITP. No other information will be considered in the evaluation of the Proposal. All pages that exceed the specified page limit will be deleted prior to evaluation.
 - **Hyperlinks** - Hyperlinks to material outside the Proposal shall not be used. Any links to other information will be ignored and not be considered in the evaluation of the Proposal.
 - **Dividers** - Section dividers will not be counted toward the allowable page total and shall contain, at a minimum, one of the following:
 - a) Section number
 - b) Section title
 - c) No other text is permitted on the dividers.
 - **Front Cover** - The front cover will not be counted towards the page limit and shall be labeled with the name of the Submitter, along with the following:

***I-5/Yesler Way to NE 117th St. - Pavement, Deck, and Expansion
Joints*** Project
Design-Build Project
Proposal
[Date of Submittal]
 - **Package (s)** - The Technical Proposal shall be uploaded to the WSDOT SFTP site and shall clearly displaying the Proposer's name.
- The Proposal shall consist of the following two divisions:
- 1) **Technical Proposal Sections ***1 through 5***, and Appendices A, B, C, and D:**

The Technical Proposal and Appendices A, B, C, and D shall be uploaded to the WSDOT SFTP site as described in Table 3.1.2 of this ITP.

Each Proposer must provide:

- A PDF Proposal with signatures.

2) Price Proposal Section *6***:**

The Price Proposal shall be submitted electronically via AASHTOWare Project Bids™ software and BidExpress® with an electronic Proposal Bond via Surety2000.com or Insurevision.com and BidExpress®, as described in Table 3.1.2 of this ITP.

The Price Proposal consists of:

1. Schedule of Items. The Proposer shall submit its Proposal Price divided into the categories identified on the Schedule of Items in BidExpress®. The total of the Schedule of Items will be the Contract Price.
2. Proposal Bond. The Proposal shall include a Proposal bond in accordance with Section 2.14.1 of this ITP.

(See Section 3.1.1 of this ITP for Proposal delivery.)

3.2 Nonresponsive

It is the Proposer's sole responsibility to ensure that its Proposal is received as required. Proposals received after the Proposal Due Date will be rejected without consideration or evaluation. Proposers shall provide responses to all information requested in the RFP. Failure to respond or to provide requested information may result in a determination by WSDOT, in its sole discretion, that a Proposal is nonresponsive.

3.3 Technical Proposal

3.3.1 General

The Technical Proposal shall include concise narrative descriptions and graphic illustrations, drawings, charts, technical reports, and calculations that will enable WSDOT to clearly understand and evaluate both the capabilities of the Proposer and the characteristics and benefits of the proposed Work. No price information of any kind may be included in the Technical Proposal. A complete copy of all approved ATCs incorporated into the Proposal, including WSDOT's approval letters issued pursuant to Section 2.8 of this ITP, shall be included in Appendix C of the Proposal.

Plans or drawings submitted as a part of the Technical Proposal shall be submitted in accordance with the requirements of the RFP. The Technical Proposal must be organized to correspond to the items listed in this Section and address the evaluation factors set forth in this Section and in Section 4.2 of this ITP. The

1 Proposer shall use tabbed dividers to separate the contents of the Technical
2 Proposal.

3 **3.3.2 Executive Summary (Section 1)**

4 Submit an executive summary, written in a Plain Language that contains
5 sufficient information to familiarize reviewers with the Proposer's Project
6 approach and ability to satisfy the Project goals; and the financial, legal, and TR
7 of the Project. The executive summary shall summarize each of the sections
8 required in this ITP. The intent is to familiarize reviewers who will not be reading
9 each individual section of the Proposal.

10 **3.3.3 Disadvantaged Business Enterprise Participation**

11 DBE Participation is a Project Goal that will be evaluated using the DBE
12 Performance Plan. WSDOT seeks a Proposer that will meet or exceed the
13 assigned DBE Goal in both the design and construction portions of the Project.
14 WSDOT sees value in a Proposer who utilizes a proactive and collaborative
15 approach on a regular basis to solicit interest and bids from DBE
16 Subcontractors/Subconsultants on Work opportunities arising from this Project.

17 **Submit:** Complete Form V, *DBE Performance Plan Template* and submit the
18 Proposer's DBE Performance Plan in their Technical Proposal as Appendix D.

19 **Evaluation Criteria:**

20 The DBE Performance Plan must explain the approach to DBE participation. The
21 DBE Performance Plan will be evaluated on its ability to achieve the WSDOT
22 DBE Participation Project goal:

23 The DBE Performance Plan must meet or exceed DBE requirements throughout
24 the life of the Project with an integrative approach to maximize DBE
25 participation. In conjunction with the requirements of Section 4.4 of this ITP, a
26 Proposer may receive an adjectival rating of "Good" if the DBE Performance Plan
27 generally meets the RFP requirements. A DBE Performance Plan that exceeds the
28 RFP requirements/objectives may receive a higher rating when the DBE
29 Performance Plan contains all the minimum elements and contains specific
30 approaches and commitments that are considered to exceed the RFP requirements,
31 such as:

- 32 1. Defining DBE Commitments to date (including Work descriptions),
33 commitments to remove barriers to DBE participation through waiver of
34 certain contract matters such as bonding requirements.
- 35 2. The Proposer cites recent examples of successful DBE participation on past
36 projects, a high percentage of race neutral participation, or both.
- 37 3. References confirm a consistent commitment to exceeding the DBE goals.

38 **3.3.4 ***Goal 1: Minimize Impacts (Section 2)**

39 It is important that during design and construction of this Project, the Proposer
40 strives to minimize impacts to the traveling public and the local communities.

WSDOT desires that the Design-Builder’s plans and approach maintain highway and local street operations; minimize the number of traffic shifts and roadway and lane closures; minimize noise, light, dust, and vibration impacts to local residents and businesses; and reduce impacts to communities. A description of this Project goal is provided in Section 1.3.4.

Submit: The Proposer shall submit the following in support of this Project goal:

Goal 1a.

- i. A narrative describing the Proposer’s staging plans and traffic control strategies for the Project. The narrative shall address the following:
 - Plan to minimize the overall roadway and lane closures
 - Plan to reduce the number or duration of allowable ramp closures
 - Plan to reduce the number of traffic shifts
 - Plan to maintain pedestrian and bicycle access throughout construction
 - Plan to limit neighborhood impacts – construction cut through traffic, employee parking
 - Plan to maintain safe access and transit operation
- ii. A narrative that outlines the critical path for the Work, the major risks, and any contingency and/or mitigation plans in place to ensure the Work can be completed within the allowable closures.
- iii. Provide any technical data to support the narratives listed under 1a.i and ii above in Appendix C. This will not be counted in the page limit for this section.
- iv. Provide the following plans:
 - Staging plan, including typical sections, for each phase of construction for the Work to be performed at each location. Include detailed Maintenance of Traffic and construction staging plans for each weekend closure.
 - Staging and Maintenance of Traffic plan to illustrate the Proposer’s approach to perform the major stormwater Work.
 - Details within staging plans to show how the Proposer will accommodate pedestrian, bicycle, and transit movements through the Project locations during major stages of construction.
- v. Provide a logic-driven Contract schedule depicted in a logic-driven linear schedule format with the Project length by milepost on the x-axis and the Project time in months and years on the y-axis. The logic-driven linear schedule shall indicate all progression of Project Work including the Critical Path and include all periods of Work restriction such as areas and

types of Work restricted by Project permits, Utility Work, and allowable roadway closures.

- vi. Preliminary baseline schedule in PDF format, prepared in Primavera P6 Version 16.2 by Oracle or later version and narrative to reflect all phases of the Project, including Project milestones, design, construction, and closeout provided on 11 by 17-inch pages. The preliminary baseline schedule shall use the Estimated NTP date set forth in Section 1.3.6 of this ITP. The preliminary baseline schedule shall demonstrate the Design-Builder's plan for performing the Work, and its understanding of, and compliance with, the schedule-related restrictions in the Contract.

The preliminary baseline schedule shall include:

- A logic-driven schedule prepared using the critical path method that includes durations of the Work in Calendar Days for each of the proposed traffic stages or phases at each location in the Project. The preliminary baseline schedule shall show the predecessor and successor relationship between activities.
- The logic-driven preliminary baseline schedule shall include the progression of obtaining the Project permits, design and construction work including all constraints related to Project permits, Utilities, and allowable roadway closures.

Goal 1b. A narrative describing the Proposer's approach to minimize noise, vibration, dust, construction lighting, and other impacts to local residents, business, and communities. The narrative shall address the following:

- Plan to implement temporary noise shields, types/duration of equipment, hours of operations, and other mitigation measures proposed to reduce noise impacts to neighborhoods.
- Plan to reduce vibration
- Plan to reduce dust
- Plan to reduce construction lighting impacts
- Plan for how the Proposer will manage and resolve citizen complaints and potential property damage and tort claims
- Plan to minimize other impacts to local residents, businesses and events

Evaluation Criteria: This Project goal is worth \$25,000,000 in Technical Credits.

Of the \$25,000,000 Technical Credits available for this Section, \$11,000,000 of the Technical Credits will be scored adjectively against Project goal 1a. A plan that generally meets the RFP requirements will receive a rating in the middle of

the Good range. A plan deemed by the evaluation committee to exceed the RFP requirements in a beneficial way may receive a rating of Very Good or Excellent.

Of the \$25,000,000 Technical Credits available for this Section, \$9,000,000 of the Technical Credits will be allocated for commitment to reducing the allowable number and/or duration of the allowable closures for all roadway segments, as listed in TR Section 2.22, *Maintenance of Traffic*.

The Proposer shall enter the proposed and committed reductions to the closures listed in Form T, providing the following:

- **U1:** Reduction in the number of one-lane weekend lane closures allowed for any Segment shown in TR Sections 2.22.4.3.2.1, 2.22.4.3.2.2, and 2.22.4.3.2.3 tables. The Proposer's commitment for the maximum number of one-lane weekend lane closures, shall not exceed 7 reductions of one-lane weekend lane closures.
- **U2:** Reduction in the number of two-lane weekend lane closures allowed for any Segment shown in TR Sections 2.22.4.3.2.1, 2.22.4.3.2.2, and 2.22.4.3.2.3 tables. The Proposer's commitment for the maximum number of two-lane weekend lane closures, shall not exceed 11 reductions of two-lane weekend lane closures.
- **U3:** Reduction in the number of three-lane weekend lane closures allowed for any Segment shown in TR Sections 2.22.4.3.2.1, 2.22.4.3.2.2, and 2.22.4.3.2.3 tables. The Proposer's commitment for the maximum number of three-lane weekend lane closures, shall not exceed 2 reductions of three-lane weekend lane closures.
- **V:** Reduction in the number of weekend roadway closures shown in the in TR Section 2.22.4.3.3.1 tables. The Proposer's commitment for the maximum number of weekend roadway closures, shall not exceed 10 reductions of weekend roadway closures.
- **W:** Reduction in the southbound I-5 linear long-term closure durations for any Segment shown in TR Sections 2.22.4.3.3.2.1, 2.22.4.3.3.2.2, and 2.22.4.3.3.2.3 tables. The Proposer's commitment for the maximum number of southbound I-5 linear long-term closure durations, shall not exceed 250 Calendar Days reduction of closure duration.
- **X:** Reduction in the northbound I-5 linear long-term closure durations for any Segment shown in Sections 2.22.4.3.3.2.2 and 2.22.4.3.3.2.3 tables. The Proposer's commitment for the maximum number of northbound I-5 linear long-term closure durations shall not exceed 250 Calendar Days reduction of closure duration.
- **Z:** Reduction in the number of entrance and exit ramp closures, for all ramp locations shown TR Section 2.22.4.3.5 table. The Proposer's commitment to reduce the number of entrance and exit ramps closures, shall not exceed 50 of entrance and exit ramp closures.

The proposed and committed reductions to the closures listed in Form T will be scored quantitatively as follows:

$$\text{Technical Credits} = (U1 \times \$60,000) + (U2 \times \$120,000) + (U3 \times \$130,000) + (V \times \$500,000) + (W \times \$2,000) + (X \times \$2,000) + (Z \times \$20,000)$$

Of the \$25,000,000 in Technical Credits available for this Section, \$5,000,000 Technical Credits will be scored adjectively against Project goal 1b. A plan that generally meets the RFP requirements will receive a rating in the middle of the Good range. An approach and plan deemed by the evaluation committee to exceed the RFP requirements in a beneficial way may receive a rating of Very Good or Excellent.***

3.3.5 *Goal 2: Communications with the Public (Section 3)**

WSDOT seeks a Design-Builder with a proactive approach to communicating with the public to provide timely and effective communications about the Project construction Work. A description of this Project goal is provided in Section 1.3.4 of this ITP.

Submit

The Proposer shall submit the following in support of this Project goal:

Goal 2a. A narrative to include procedures, tools, strategies, and techniques the Proposer will use to ensure timely and effective notification to the travelling public, residents, businesses, Local Agencies, community groups, schools, transit agencies, and emergency services of Project construction Work, freeway, lanes and ramp closures, traffic delays, alternate routes, and noise impacts.

Goal 2b. Procedures, tools, strategies, and techniques the Proposer will use to respond to public comments regarding noise impacts or impacts from vibration and dust control.

Evaluation Criteria

The Proposer's approach to the Communications with the Public goal will be evaluated as follows:

- Of the \$10,000,000 in Technical Credits available for this Section, \$5,000,000 in Technical Credits will be scored adjectively against Project goal 2a based on the Proposer's specific approach and plan in support of the Project goal. An approach that generally meets the RFP requirements will receive a rating in the middle of the Good range. An approach and plan deemed by the evaluation committee to exceed the RFP requirements in a beneficial way may receive a rating of Very Good or Excellent.
- Of the \$10,000,000 in Technical Credits available for this Section, \$5,000,000 in Technical Credits will be scored adjectively against Project goal 2b based on the Proposer's procedures, tools, strategies, and techniques that will be used in support of the Project goal and to respond to public comments regarding noise

impacts or impacts from vibration and dust control. An approach and plans that generally meet the RFP requirements will receive a rating in the middle of the Good range. An approach and plan deemed by the evaluation committee to exceed the RFP requirements in a beneficial way may receive a rating of Very Good or Excellent.***

3.3.6 *Goal 3: Project Management (Section 4)**

WSDOT seeks a Design Builder that recognizes the benefits of collaborating with WSDOT to identify and resolve Project-related issues at the lowest level, and the value of implementing a partnering relationship with Project stakeholders during all phases of the Project from startup, design, construction and through the closeout of the Project. A description of this Project goal is provided in Section 1.3.4 of this ITP.

Submit

The Proposer shall submit the following in support of this Project goal:

Goal 3a.

- i. A narrative that describes the Proposer's collaborative process for proactively and effectively managing issues and risk items at the Project level that can be maintained throughout the life of the Project.
- ii. A risk management plan that identifies specific risks to assure a successful delivery of this Project. The risk management plan shall identify the owner of each risk and shall discuss approaches and strategies that the Design-Build team will employ to manage these risks.

Goal 3b. Provide a plan for removing people experiencing homelessness within the Project limits that shall implement the State, King County, and City of Seattle requirements for illegal encampment removal.

Evaluation Criteria:

The Proposer's approach to the Project Management goal will be evaluated as follows:

- Of the \$15,000,000 in Technical Credits available for this Section, \$12,000,000 in Technical Credits will be scored adjectively against Project goal 3a. A plan and approach that generally meet the RFP requirements will receive a rating in the middle of the Good range. An approach and plan deemed by the evaluation committee to exceed the RFP requirements in a beneficial way may receive a rating of Very Good or Excellent.
- Of the \$15,000,000 in Technical Credits available for this Section, \$3,000,000 in Technical Credits will be scored adjectively against Project goal 3b. A plan that that generally meets the RFP requirements will receive a rating in the middle of the Good range. A plan deemed by the evaluation committee to exceed the RFP requirements in a beneficial way may receive a rating of Very Good or Excellent.***

1 **3.3.7 ***Goal 4: Project Safety (Section 5)**

2 WSDOT seeks a Design-Builder with a proactive approach to public and Project
3 worker safety. A description of this Project goal is provided in Section 1.3.4 of
4 this ITP.

5 **Submit**

6 The Proposer shall submit the following in support of this Project goal:

- 7 • A narrative that describes the Proposer’s plan for implementing a safety
8 program to ensure the safety of both the public and Project worker during all
9 phases of the Project.

10 **Evaluation Criteria**

11 The Proposer’s approach to the Project Safety goal will be evaluated as follows:

12 \$10,000,000 in Technical Credits available for this Section will be scored
13 adjectively against Project Goal 4, based on the Proposer’s specific safety plan
14 and approach in support of this Project goal.

15 A safety plan that generally meets the RFP requirements will receive a rating in
16 the middle of the Good range. A plan deemed by the evaluation committee to
17 exceed the RFP requirements in a beneficial way may receive a rating of Very
18 Good or Excellent.***

19 **3.3.8 Appendix A - Proposer Information and Certifications**

20 The Proposer shall provide the following forms and other information in
21 Appendix A of the Proposal:

- 22 1. Form A, *Design-Build Proposal Form and Signature Page*. If the Proposer
23 is a joint venture, Form A must be executed by all joint venture members.
- 24 2. Form D, *Contract Time/Milestone Completion Deadlines*. Form D
25 includes a blank entitled “Contract Time Bid” to be filled in by the
26 Proposer for the purpose of establishing the deadline for Substantial
27 Completion of the Project. The number of Calendar Days entered for
28 “Contract Time Bid” on Form D will be used in Section 4.2 of the
29 Contract Form to establish the Contract Time. The Proposer shall
30 determine the number of Calendar Days to be included for “Contract Time
31 Bid” on Form D pursuant to its plan for performance of the Work, taking
32 into account the liquidated damages provided in the Contract.

33 The number of days to be shown shall start on the first Calendar Day after
34 NTP and shall end on the scheduled date of Substantial Completion. All
35 requirements of the Contract shall be considered in determining the
36 number of Calendar Days shown for Contract Time Bid on Form D. In
37 making such determination, the Proposer shall adjust the resources and
38 rates of production so that Substantial Completion is accomplished no
39 later than ***July 7, 2027***.

1 If the Proposer fails to complete and submit Form D or fails to submit a
2 bid for the Contract Time bid item, WSDOT will consider the bid
3 nonresponsive.

4 The Milestone Completion Deadlines provided on Form D will be
5 considered as commitments by the Proposer in the execution of the
6 Contract. The milestones provided and the proposed duration from NTP
7 will be considered in the evaluation as described in Section 3.3.4 of this
8 ITP.

- 9 3. Form E, *Identification of Proposer, Guarantors, Major Participants,*
10 *Earthwork Subcontractors, Structures Subcontractors, and Each*
11 *Subconsultant and Subcontractor performing 20 Percent or more of the*
12 *Design-Build Work.* The Design-Builder shall verify that all
13 Subcontractors listed are confirmed (not suspended or debarred), in
14 accordance with 48 CFR § 9.4, DOT Order 4200.5E and the WSDOT
15 *Construction Manual* (Appendix D).
- 16 4. Description of Legal Structure - A detailed description of the legal
17 structure of the entity making the Proposal. If the Proposer is a partnership
18 or joint venture, the Proposer shall provide the full names and addresses of
19 all partners or joint ventures, identify the equity ownership interest of each
20 entity, and provide formation and organization information for each
21 general partner or joint venture. If the Proposer is a limited liability entity,
22 the Proposer shall provide full names and addresses of all equity holders in
23 the limited liability entity and identify any entities that are financially
24 responsible in any way for the limited liability entity. If the Proposer has
25 not previously submitted final legal structure organizational documents,
26 the Proposer shall provide said documents to the Proposal in this Section.
27 Failure to submit final legal structure organizational documents to
28 WSDOT either prior to or with the Proposal shall render the Proposal
29 nonresponsive.
- 30 5. Form G, *Non-Collusion Declaration*
- 31 6. Form H, *Certification for Federal-Aid Contracts*
- 32 7. Form K, *Form of Guaranty.* If the Proposer is a limited liability entity, the
33 Proposer shall include a commitment letter from each of the equity holders
34 of the Proposer, agreeing to provide a guaranty of the Proposer's
35 obligations on Form K.
- 36 8. Form L, *Utility Certification.* The Proposer shall complete Form L.
- 37 9. Evidence of Authorization - Evidence of authorization to execute and
38 deliver the Proposal and the Contract. If such authorization arises out of
39 one or more powers of attorney, copies of the powers of attorney shall be
40 provided as well as certified copies of the appropriate resolutions from the
41 applicable entities' governing bodies authorizing said powers of attorney.
42 If the Proposer is a partnership or a joint venture, such evidence shall be

provided for the Proposer and for each of its general partners/joint venture members, at all tiers, and in all cases certified by an appropriate officer.

10. Information and Work Site Certification - A certified statement that the Proposer has, prior to submitting its Proposal, in accordance with generally accepted engineering and construction practices, reviewed the Reference Documents and other information provided by WSDOT; inspected and examined the Site and surrounding locations; and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions that are discernible from the surface and affect the Project, to the extent the Proposer deemed necessary or advisable for submittal of a Proposal. The certified statement shall specifically indicate that as a result of such review, inspection, examination, and other activities, the Proposer is familiar with and accepts the Site and the physical requirements of the Work.

11. Certification Regarding Changes to Key Personnel and Major Participants – A signed statement that the Key Personnel and Major Participants identified on the Proposer’s SOQ have not changed. Alternatively, the Proposer may provide a WSDOT approval letter regarding any such changes to Key Personnel or Major Participants.

12. Certification Regarding Right of Way – A signed statement that the Proposer will construct the Work within the ROW identified in the RFP. Alternatively, the Proposer may provide a WSDOT approval letter regarding any ATC that contemplates construction of the Work outside of the ROW identified in the RFP.

13. Form M, *Stipend Agreement*. The Proposer shall complete Form M.

14. Form N, *Stipend Invoice*. The Proposer shall complete Form N.

15. Form Q, Option for Use of WSDOT-Owned Property. The Proposer shall complete Form Q indicating its election to use the available WSDOT-owned property at ****I-5 Potential Staging Areas, Appendix R****; or to decline the exercise of such option. If the Proposer indicates “yes” on Form Q submitted with its Proposal, the Proposer shall utilize the property in accordance with the Contract. If the Proposer indicates “no” on Form Q submitted with its Proposal, the Proposer is declining to use the WSDOT-owned property. In the event the Proposer fails to mark “yes” or “no” on Form Q, or if the Proposer fails to submit Form Q with the Proposal, it shall be deemed that the Proposer has elected to decline the option to use the WSDOT-owned property.

16. Form R, *Organizational Conflicts of Interest – Disclosure and Avoidance/Neutralization/Mitigation Plan*. The Proposer shall complete Form R.

17. Form S, *Organizational Conflicts of Interest Certification*. The Proposer shall complete Form S.

18. Form T, *Maintenance of Traffic Milestone Reduction in the Allowable Closures*. The Proposer shall complete Form T.

3.3.9 Appendix B – Resumes

If additional Project personnel are required other than Key Personnel, the Proposer shall include resumes in Appendix B. Resumes shall be limited to two pages per Person.

3.3.10 Appendix C - Details of Technical Approach and Innovations

A complete copy of each approved ATC, if provided, shall be included in Appendix C of the Proposal. Additional appendices may be used for clarification, illustrative purposes, or both. Appendices would typically consist of plan sheets or other illustrative information and shall not include narrative text except as specifically required by this ITP.

3.3.11 Appendix D - DBE Performance Plan

The Proposer shall provide a completed Form V, *DBE Performance Plan Template*, per the instructions. The DBE Performance Plan shall not be left blank in any areas and it shall not contain any notations such as “n/a”. The DBE Performance Plan will be used to evaluate the DBE Participation Project Goal.

3.3.12 Price Proposal (Section ***6***)

The Price Proposal shall include the information and documentation identified in this Section, Section 3.1.3, and Table 3.1.2 of this ITP.

Price Proposal

- A. Schedule of Items. The Proposer shall submit its Proposal Price divided into the categories identified on the Schedule of Items in BidExpress®. The total of the Schedule of Items will be the Contract Price.
- B. Proposal Bond. The Proposal shall include a Proposal Bond in accordance with Section 2.14.1 of this ITP.

4 Proposal Evaluation Process

4.1 General

WSDOT will award the Contract (if at all) to the responsive Proposer who has complied with all of the requirements of the RFP, is technically qualified, and has the Apparent Best Value Proposal, as determined in accordance with this Section. WSDOT will notify the successful Proposer and the unsuccessful Proposers.

4.2 Technical Evaluation Scoring Summary

The technical evaluation factors are tabulated in Table 4.2 below. Proposers may be declared nonresponsive for receiving a fail for any factor that is scored pass/fail (P/F). The technical evaluation score will be calculated by summing the

- 1 Proposer's Technical Credits earned out of the Max Technical Credits column
2 shown in Table 4.2. The sections will be evaluated against the evaluation criteria.
3 During the evaluation process, information in any section listed in Table 4.2 of
4 this ITP can be used when scoring other sections.

5 **Table 4.2 TECHNICAL EVALUATION SCORING SUMMARY**

TECHNICAL EVALUATION SCORE SHEET	MAX TECHNICAL CREDITS
TECHNICAL PROPOSAL - SECTIONS ***1 THROUGH 5***:	
Section 1 - Executive Summary	P/F
Section 2 – Goal #1 Minimize Impacts	***\$25,000,000***
Section 3 – Goal #2 ***Communications with the Public***	***\$10,000,000***
Section 4 – Goal #3 ***Project Management***	***\$15,000,000***
Section 5 – Goal #4 ***Project Safety***	***\$10,000,000***
Appendix A – Proposer Information and Certifications	
Form A, <i>Design-Build Proposal Form and Signature Page</i>	P/F
Form D, <i>Contract Time/Milestone Completion Deadlines</i>	P/F
Form E, <i>Identification of Proposer, Guarantors, Major Participants, Earthwork Subcontractors, Structures Subcontractors, and Each Subconsultant and Subcontractor Performing 20 Percent or More of the Design-Build Work</i>	P/F
Description of Legal Structure	P/F
Form G, <i>Non-Collusion Declaration</i>	P/F
Form H, <i>Certification for Federal-Aid Contracts</i>	P/F
Form K, <i>Form of Guaranty</i>	P/F
Form L, <i>Utility Certification</i>	P/F
Evidence of Authorization	P/F
Information and Work Site Certification	P/F
Certification Regarding Changes to Key Personnel and Major Participants	P/F
Certification Regarding Right of Way	P/F
Form M, <i>Stipend Agreement</i>	N/A
Form N, <i>Stipend Invoice</i>	N/A
Form Q, <i>Option for Use of WSDOT-Owned Property</i>	N/A
Form R, <i>Organizational Conflicts of Interest – Disclosure and Avoidance/Neutralization/Mitigation Plan</i>	P/F
Form S, <i>Organizational Conflicts of Interest Certification</i>	P/F
Form T, <i>Maintenance of Traffic Milestone Reduction in the Allowable Closures</i>	P/F

TECHNICAL EVALUATION SCORE SHEET	MAX TECHNICAL CREDITS
TECHNICAL PROPOSAL - SECTIONS ***1 THROUGH 5***:	
Appendix B - Resumes	
Appendix C - Details of Technical Approach and Innovations	
Appendix D - DBE Performance Plan	P/F
PRICE PROPOSAL - SECTION ***6***	
Schedule of Items	P/F
Proposal Bond	P/F
GRAND TOTAL	***\$60,000,000***

1 **4.3 *Responsiveness and Pass/Fail Review***

2 **4.3.1 Initial Responsiveness Review**

3 WSDOT will conduct an initial review of the Proposals for responsiveness to the
4 requirements set forth in the RFP, including compliance with the P/F criteria set
5 forth in Section 4.2 of this ITP. Any Proposal not responsive to the RFP shall be
6 excluded from further consideration and the Proposer that submitted such
7 Proposal will be so advised. WSDOT may also exclude from consideration any
8 Proposer whose Proposal contains a material misrepresentation.

9 **4.3.2 Upset Amount Determination**

10 ***This section is intentionally omitted.***

11 **4.3.3 Pass/Fail Criteria Review**

12 Proposals will be reviewed based on the following P/F criteria:

- 13 • Business form of Proposers and team members shall meet Project
14 requirements.
- 15 • The Major Participants and Key Personnel listed in the Proposal shall not have
16 changed since submission of its SOQ, or the Proposer shall have previously
17 advised WSDOT of a change and received WSDOT's written approval for the
18 change.
- 19 • Proposal bond shall have been provided in accordance with Section 2.14 of this
20 ITP.
- 21 • Proposer information, certifications, and documents as listed in Section 3.1.2
22 of this ITP are included in the Proposal and are complete, accurate, and
23 responsive, and they do not identify any material adverse changes from the
24 information provided in the SOQ information.
- 25 • The Proposer has provided all other forms and documentation required by this
26 ITP.

A Proposal must receive an initial “pass” on all P/F criteria listed in the RFP for the Proposal to be further evaluated. WSDOT may, at its sole discretion, request a Proposer to provide clarifications for purposes of determining whether the P/F criteria are met. Failure to achieve a “pass” rating on a P/F factor shall result in the Proposal being declared nonresponsive. Failure to submit information in the manner, format, and detail specified may result in the Proposal receiving a “fail” rating and being declared nonresponsive. Even though a Proposal receives an initial “pass” allowing technical evaluation to proceed, the Proposal may later be determined to have failed.

The executive summary will be reviewed as P/F, but information can be used during evaluation of other sections.

4.4 *Evaluation of the Technical Proposal*

WSDOT will evaluate each of the technical requirements described in Section 3 of this ITP against the evaluation criteria to determine the Proposal technical score. The technical evaluation scoring summary in Section 4.2 of this ITP identifies the maximum Technical Credits for each technical requirement.

The WSDOT evaluation committee will review each Proposal identifying significant and minor strengths, and significant and minor weaknesses. The evaluation committee may also use a “high” or “low” prefix to further differentiate the strengths or weaknesses. When, in the judgment of the evaluation committee, a Proposal element does not equate to a strength or weakness, but is being acknowledged, a “Neutral” will be identified.

Strengths and weaknesses are defined as follows:

- Strengths – That part of the Proposal which ultimately represents a benefit to the Project and is expected to increase the Proposer’s ability to meet or exceed the Project goals. A minor strength has a slight positive influence on the Proposer’s ability to meet or exceed the Project goals, while a significant strength has a considerable positive influence on the Proposer’s ability to meet or exceed the Project goals.
- Weaknesses – That part of the Proposal which detracts from the Proposer’s ability to meet the Project goals or may result in an inefficient or ineffective performance. A minor weakness has a slight negative influence on the Proposer’s ability to meet the Project goals, while a significant weakness has a considerable negative influence on the Proposer’s ability to meet the Project goals.

Based on the identified strengths and weaknesses, the evaluation team will select an adjectival rating and select a percent of maximum score in the identified range in accordance with this Section.

After selecting a percent of maximum score for each section, the Proposal score will be calculated by multiplying the percent of maximum score by the points available listed in Section 4.2 of this ITP and then summing the calculated scores.

The following adjectival rating system will be used in determining the maximum Technical Credits for Sections of this ITP that are evaluated adjectively:

- Excellent (75-100 percent): The section of the Proposal demonstrates an approach that is considered to significantly exceed the RFP requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project), and provides a consistently outstanding level of quality. In order for the section of the Proposal to meet the minimum criteria to be considered “Excellent”, it must be determined to have significant strengths and/or a number of minor strengths and no appreciable weaknesses. The greater the significance of the strengths and the number of strengths will result in a higher percentage. There is virtually no risk that the Proposer would be unsuccessful in delivering the Project to WSDOT’s satisfaction and would most likely exceed all Project goals.
- Very Good (50-74 percent): The section of the Proposal demonstrates an approach that is considered to exceed the RFP requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project) and offers a generally better than acceptable level of quality. In order for the section of the Proposal to meet the minimum criteria to be considered to be “Very Good”, it must be determined to have strengths and no significant weaknesses. Minor weaknesses are offset by strengths. The greater the significance of the strengths and/or the number of strengths, and the fewer the minor weakness will result in a higher percentage. There is little risk that the Proposer would be unsuccessful in delivering the Project to WSDOT’s satisfaction and would most likely meet and/or exceed all Project goals.
- Good (25-49 percent): The section of the Proposal demonstrates an approach that is considered to generally meet the RFP requirements/objectives and offers an acceptable level of quality. In order for the section of the Proposal to meet the minimum criteria to be considered to be “Good”, it must be determined to have strengths, even though minor and/or significant weaknesses exist. If a section of the Proposal meets RFP requirements, it will receive a “Neutral” designation. The greater the significance of the strengths and/or the number of strengths, and the fewer the minor or significant weakness will result in a higher percentage. It is expected that the Proposer would be able to deliver the Project to WSDOT’s satisfaction and meet all Project goals.
- Fair (0-24 percent): The section of the Proposal demonstrates an approach that contains minor and/or significant weaknesses and no appreciable strengths. The section of the Proposal may not meet the RFP requirements and may be determined to be nonresponsive.

For Section ***2*** of this ITP, Technical Credits will be determined by calculation.

WSDOT, at its sole discretion, may reject any Proposal deemed nonresponsive to the RFP.

4.5 *Apparent Best Value Determination*

4.5.1 **Proposal Rating**

Each responsive Proposal will be rated using the following equation:

$$\text{Score} = \$P - \$T$$

Where:

Score	=	Proposal rating
\$P	=	Proposal Price
\$T	=	Sum of all Technical Credits earned

The Apparent Best Value Proposal will be the responsive Proposal with the lowest score from the equation above.

4.6 *Best and Final Offers*

If all Proposal Prices are less than or equal to the Upset Amount (see Section 4.3.2 of this ITP), WSDOT does not currently intend to request BAFOs, but reserves the right to do so. If all Proposal Prices exceed the Upset Amount, it is likely that WSDOT will request BAFOs. There may be other circumstances in which BAFOs may be requested (See Section 4.3.2 of this ITP).

5 **Contract Award and Execution**

Following selection of a Proposer by WSDOT and verification that the Proposer has complied with the requirements of the RFP, WSDOT will send an execution copy of the Contract to the selected Proposer. To be awarded the Contract, the selected Proposer must satisfy WSDOT's Contract award requirements by executing and delivering the Contract together with all other required documents described below, within 20 Calendar Days of receipt of the execution copy of the Contract from WSDOT. WSDOT will return to the Design-Builder one copy of the Contract executed by WSDOT within 10 Calendar Days of receipt of all required documents from the Proposer:

- Executed Contract
- Evidence of authorization to execute the Contract, in the form of a certified resolution of the governing body of Proposer expressly stating such body's authorization to execute the Contract and, if the Proposer is a partnership, joint venture, unincorporated association, or limited liability company, of the governing bodies of the entity's partners or members.
- Contract Bond issued by the Surety listed in the Proposal, or an equivalent Surety meeting the requirements set forth in Section 2.14 of this ITP.
- The insurance policies, endorsements, and certificates (including Form U, *Professional Liability Insurance Certification*) required under Section 1-07.18 of the *General Provisions*.

- Evidence that the Proposer, its Major Participants, and other identified Subcontractors hold all licenses as of award necessary to perform the Work.
- If applicable, the guaranties in the provided Form K, together with appropriate evidence of authorization thereof.
- WSDOT Form 421-013, *Transit - Bicycle - Pedestrian Contractor's Cost Estimate* with the Design-Builder's costs for transit, bicycle, and pedestrian Work

5.1 *Debriefing*

Within 14 Calendar Days after execution and delivery of the Contract, WSDOT will be available for an oral debriefing session. Only Proposers who submit a responsive Proposal may request an optional debriefing to discuss the evaluation of their Proposal. A written request must be made to the WSDOT Technical Point of Contact by an authorized representative of an unsuccessful Proposer.

5.2 *Proposal Evaluation*

Within 7 Calendar Days after the announcement of Apparent Best Value Proposer, WSDOT will email each Proposer the scoring summary and summarized evaluator comments of their Proposal.

6 *Practical Design Workshop*

Within 7 Calendar Days of Contract execution, and prior to issuing NTP, the parties will discuss and potentially initiate a Practical Design Workshop (PDW). During the PDW, the Design-Builder and WSDOT will bring together key Project management and technical staff to collaboratively identify practical design opportunities that may reduce Project cost, shorten duration, or reduce risk while satisfying the Project's purpose and need.

7 *Proposer Stipends*

WSDOT will pay a stipend of ***\$825,000*** to all Proposers who submit a Form M, *Stipend Agreement*; Form N, *Stipend Invoice*, and responsive Proposal.

The stipend will be paid within 45 Calendar Days after award of the Contract or the decision not to award a Contract.

No Proposer shall be entitled to reimbursement of any of its costs in connection with the RFP except as specified in this Section. A Proposer that has submitted a nonresponsive Proposal will not earn a stipend.

In consideration for paying the stipend, WSDOT reserves the right to use any ideas or information contained in all Proposals for this Project or with any subsequent procurement, without any obligation to pay any additional compensation to the respective Proposer. Each Proposer acknowledges that WSDOT will have the right to inform the Design-Builder, after award, regarding the contents of all Proposals for which stipends have been (or will be) paid, for

the purpose of allowing concepts to be reviewed by the selected Design-Builder and incorporated into the Contract as deemed advisable. WSDOT will provide the Design-Builder with all the ATCs as soon as practicable. The Design-Builder may elect to incorporate these ATCs into the Contract in accordance with Section 1-04.4 of the *General Provisions*. Furthermore, upon the Proposers' receipt of payment, the right to use such Work product will extend to other projects undertaken by WSDOT, as WSDOT deems appropriate. However, WSDOT acknowledges that the use of any of the Work product by WSDOT or the Design-Builder is at the sole risk and discretion of WSDOT and the Design-Builder, and it will in no way be deemed to confer liability on the unsuccessful Proposer.

7.1 *Proprietary or Confidential Information*

If the Proposer elects not to accept a stipend, they may clearly designate any information contained in the Proposal that is proprietary or confidential. Marking of the entire Proposal or entire sections of the Proposal as proprietary or confidential will not be accepted nor honored.

To the extent consistent with RCW 42.56, the Public Records Act, WSDOT shall maintain the confidentiality of the Proposer's information marked confidential or proprietary. If a request is made to view a Proposer's Proposal, WSDOT will notify the Proposer of the request and date that the records will be released to the requester unless the Proposer obtains a court order enjoining that disclosure. If the Proposer fails to obtain the court order enjoining the disclosure, WSDOT will release the requested information on the date specified.

The State's sole responsibility shall be limited to maintaining the above data in a secure area and to notifying the Proposer of any request(s) for disclosure for so long as WSDOT retains the Proposer's information in WSDOT records. Failure to so label such materials or failure to timely respond after notice of request for public record has been given shall be deemed a waiver by the Proposer of any claim that such materials are exempt from disclosure.

8 Protests

8.1 *Protest Procedures*

This Section sets forth the exclusive protest remedies available with respect to the RFP. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. These protest procedures are included in the RFP expressly in consideration for such waiver and agreement by the Proposers. Such waiver and agreement by each Proposer are also consideration to each other Proposer for making the same waiver and agreement.

All protests and related materials shall be filed in writing, by email, to the Protest Official. The email subject line shall be “Protest for [Contract Name and Contract Number]”. The Protest Official is identified as:

Jenna Kemp
WSDOT Contract Ad & Award Office
caa@wsdot.wa.gov

If a Proposer disregards, disputes, or does not follow the exclusive protest remedies set forth in the RFP, it shall indemnify, defend, protect, and hold harmless WSDOT, its officers, officials, employees, agents, representatives, and consultants from and against all liabilities, expenses, costs (including attorneys’ fees and costs), fees, and damages incurred or suffered as a result. The submission of a Proposal by a Proposer shall be deemed the Proposer’s irrevocable and unconditional agreement with such indemnification obligation.

8.1.1 Protests Regarding Request for Proposal Documents

The Proposer may protest the terms of the RFP prior to the time for submission of Proposals on the grounds that (a) a material provision in the RFP is ambiguous; (b) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement; or (c) the RFP in whole or in part exceeds the authority of WSDOT. Protests regarding the RFP shall be filed only after the Proposer has submitted a written request for clarification prior to the Proposal Due Date set forth in Section 1 of this ITP in an effort to remove the grounds for protest.

Protests regarding the RFP shall completely and succinctly state the grounds for protest and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury.

Protests regarding the RFP shall be filed as soon as the basis for protest is known to the Proposer, but in any event it must be actually received by no later than 4:59:59 p.m., PT, on the 10th Calendar Day before the Proposal Due Date, provided that protests regarding an addendum to the RFP shall be filed and actually received no later than 4:59:59 p.m., PT, on the 5th Calendar Day after the addendum to the RFP is issued (or no later than the Proposal Due Date, if earlier).

WSDOT will distribute copies of the protest to the other Proposers and may, but need not, request other Proposers to submit statements or arguments regarding the protest and may, at its sole discretion, discuss the protest with the protesting Proposer. If other Proposers are requested to submit statements or arguments, they may file a statement in support of or in opposition to the protest within 7 Calendar Days of the request, and such responses shall be received no later than 4:59:59 p.m., PT, on the 7th Calendar Day after the request.

The protesting Proposer shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest unless the Protest Official or their designee agrees to a hearing. The Protest Official or their designee will decide the protest on the basis of the written submissions within

15 Calendar Days after the Protest Official receives the protest. The Protest Official will furnish copies of the decision in writing to the WSDOT Technical Point of Contact and each Proposer. The decision shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. If necessary to address the issues raised in the protest, WSDOT will make appropriate revisions to the RFP by issuing addenda. WSDOT may, in its sole discretion, extend the Proposal Due Date.

Notwithstanding the existence of a protest, WSDOT may, in its sole discretion, continue the procurement process or any portion thereof.

The failure of a Proposer to raise a ground for a protest regarding the RFP within the applicable period shall constitute an unconditional waiver of the right to protest the terms of the RFP and shall preclude consideration of that ground in any protest unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests.

8.1.2 Protests Regarding Responsiveness Determination or Award

A Proposer may protest any determination by WSDOT regarding lack of responsiveness or any award made by WSDOT by filing a written notice of protest by email to the Protest Official. The email subject line shall be “Protest for [Contract Name and Contract Number]”. WSDOT will distribute copies of the protest to the other Proposers. The notice of protest shall specifically state the grounds of the protest.

Notice of protest of any nonresponsiveness determination must be filed by no later than 4:59:59 p.m., PT, on the 5th Calendar Day after the notification of nonresponsiveness. Notice of protest of any award by WSDOT must be filed within 9 Calendar Days after WSDOT’s opening of the Price Proposals (announcement of Apparent Best Value Proposer).

By no later than 4:59 p.m., PT, on the 7th Calendar Day of the notice of protest, the protesting Proposer must file with the Protest Official, a detailed statement of the grounds, legal authorities, and facts, including all documents and evidentiary statements, in support of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protesting Proposer shall have the burden of proving its protest by clear and convincing evidence.

Failure to file a notice of protest or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to protest the evaluation or qualification process and decisions thereunder, other than any protest based on facts not reasonably ascertainable as of such date.

The other Proposers may file by email to the Protest Official, with a copy to the protesting Proposer, a statement in support of or in opposition to the protest. The email subject line shall be “Protest for [Contract Name and Contract Number]”. Such statements must be filed within 7 Calendar Days after the protesting Proposer files its detailed statement of protest.

1 Unless otherwise required by law, no evidentiary hearing or oral argument shall
2 be provided, except, in the sole discretion of the Protest Official or his designee, a
3 hearing or argument may be permitted if necessary for protection of the public
4 interest or an expressed, legally recognized interest of a Proposer or WSDOT. The
5 Protest Official or their designee will issue a written decision regarding the protest
6 within 15 Calendar Days after the Protest Official receives the detailed statement
7 of protest. Such decision shall be final and conclusive and not subject to legal
8 challenge unless wholly arbitrary. The Protest Official or his designee will deliver
9 the written decision to the WSDOT Technical Point of Contact and each
10 Proposer.

11 If the Protest Official or his designee concludes that the Proposer filing the protest
12 has established a basis for protest, the Protest Official or his designee will determine
13 what remedial steps, if any, are necessary or appropriate to address the issues raised in
14 the protest. Such steps may include, without limitation, withdrawing or revising the
15 decisions, issuing a new RFP, or taking other appropriate actions.

16 **8.2 Judicial Review**

17 Any decision made by WSDOT regarding the award and execution of the
18 Contract or Proposal rejection shall be conclusive subject to the scope of judicial
19 review permitted under Washington Law. Documents requesting such review, if
20 any, shall be timely filed in the Superior Court of Thurston County, Washington.

21 **End of Instructions to Proposers**

22

PROPOSAL FORMS

1	
2	Form A <i>Design-Build Proposal Form and Signature Page</i>
3	Form D <i>Contract Time/Milestone Completion Deadlines</i>
4	Form E <i>Identification of Proposer, Guarantors, Major Participants, Earthwork</i>
5	<i>Subcontractors, Structures Subcontractors and Each Subconsultant and</i>
6	<i>Subcontractor Performing 20 Percent or More of the Design-Build Work</i>
7	Form G <i>Non-Collusion Declaration</i>
8	Form H <i>Certification for Federal-Aid Contracts</i>
9	Form K <i>Form of Guaranty</i>
10	Form L <i>Utility Certification</i>
11	Form M <i>Stipend Agreement</i>
12	Form N <i>Stipend Invoice</i>
13	Form Q <i>Option for Use Of WSDOT-Owned Property</i>
14	Form R <i>Organizational Conflicts of Interest – Disclosure and</i>
15	<i>Avoidance/Neutralization/Mitigation Plan</i>
16	Form S <i>Organizational Conflicts of Interest Certification</i>
17	Form T <i>Maintenance of Traffic Milestone Reduction in the Allowable Closures</i>
18	Form U <i>Professional Liability Insurance Certification</i>
19	Form V <i>Disadvantaged Business Enterprise Performance (DBE) Plan Template</i>

FORM A

DESIGN-BUILD PROPOSAL FORM AND SIGNATURE PAGE

Washington State Department of Transportation

Design-Build Request for Proposal

*****I-5/Yesler Way to NE 117th St. – Pavement, Deck, and Expansion Joints
Project*****

PROPOSER: _____

Proposal Date: _____

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Jenna Kemp

WSDOT Contract Ad & Award Office

Transportation Building, Room 2D-20

310 Maple Park Avenue SE

Olympia, WA 98501-7360

The undersigned (“Proposer”) submits this Proposal (the “Proposal”) in accordance with the Instructions to Proposers (ITP) contained in the Request for Proposal (RFP) issued by Washington State Department of Transportation (WSDOT), dated _____, for the ***I-5/Yesler Way to NE 117th St. – Pavement, Deck, and Expansion Joints*** Project (the “Project”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the ITP. If the Proposer is a joint venture, or Limited Liability Company (LLC), the agreements, acknowledgments, certifications, representations, duties and obligations of the Proposer under the Proposal, and if awarded, under the Contract, shall be deemed made jointly and severally by each joint venture or LLC member.

1) In consideration for WSDOT supplying us, at our request, with the RFP documents and agreeing to examine and consider this Proposal, the undersigned agrees:

to keep this Proposal open for acceptance for 90 Calendar Days after the Proposal Due Date without any member or partner withdrawing or any other change being made in the Proposer’s organization, unless WSDOT has agreed in its sole discretion and in writing to such change or withdrawal; and

if this Proposal is accepted, to provide the Contract Bond securing the due performance of the design-build Contract (“Contract”) as stipulated in the Contract and the RFP.

2) If selected by WSDOT, Proposer agrees to (a) execute the Contract to design and construct the Project in accordance with the Contract Documents and (b) to provide all documents and satisfy all other requirements set forth in Section 5 of this ITP.

3) Enclosed herewith, and by this reference incorporated herein and made a part of this Proposal, are the following:

Section 1 Executive Summary

1 Section 2 ***Minimize Impacts***

2 Section 3 ***Communications with the Public***

3 Section 4 ***Project Management***

4 Section 5 ***Project Safety***

5 Appendix A

6 Appendix B

7 Appendix C

8 Appendix D

9 4) Proposer acknowledges receipt, understanding, and full consideration of all RFP
10 documents, other documents identified on the Project website
11 (www.wsdot.wa.gov) and the following addenda to the RFP:

12 • *[List addenda, if applicable]*

13 5) Proposer certifies that it has carefully examined and is fully familiar with the
14 RFP documents and is satisfied that such provisions provide sufficient detail
15 regarding the Work and the other obligations of the Design-Builder under the
16 Contract and do not contain internal inconsistencies; that it has carefully checked
17 all the words, figures, and statements in its Proposal; that it has conducted such
18 other field investigations and additional design development which are prudent
19 and reasonable in preparing this Proposal, including a thorough review of all of
20 the RFP documents; and that it has notified WSDOT of any deficiencies in or
21 omissions from any RFP documents or other documents provided by WSDOT
22 and of any unusual Site conditions observed prior to the date hereof.

23 6) Proposer agrees that its SOQ, as modified by this Proposal, is incorporated into
24 this Proposal as if fully set forth herein. Proposer certifies that each, every, and all
25 of the representations made by Proposer in this Proposal are true and correct.

26 7) Proposer understands that WSDOT is not bound to accept the lowest priced
27 Proposal or any Proposal.

28 8) Proposer further understands that all expenses incurred by it in preparing this
29 Proposal and participating in the RFP process will be borne solely by the
30 Proposer, except to the extent that the Proposer receives the Stipend as provided
31 for in the RFP.

32 9) Proposer agrees that WSDOT will not be responsible for any errors, omissions,
33 inaccuracies, or incomplete statements in this Proposal.

34 10) This Proposal shall be governed by and construed in all respects according to the
35 laws of the State of Washington.

36 The undersigned affirms that the information provided herein is true and accurate and that
37 any misrepresentations are made under penalty of perjury.

38 Dated _____,
39 Proposer _____

1 *[Insert name of the Proposer, identify the type of organization and State or country of*
2 *organization, and if the Proposer is a joint venture provide signature blocks for each*
3 *joint venture member.]*

4 *[Insert appropriate signature block from below.]*

5 1) Sample signature block for corporation or LLC:

6 *[Insert the Proposer's name]*

7 By: _____

8 Name: _____

9 Title: _____

10 2) Sample signature block for partnership or joint venture:

11 *[Insert the Proposer's name]*

12 By: *[Insert general partner's or member's name]*

13 Name: _____

14 Title: _____

15 By: _____

16 Print Name: _____

17 Title: _____

18 *[Add signatures of additional general partners or members as appropriate. If*
19 *Proposer is a joint venture, all joint venture members must individually execute*
20 *this document.]*

21 3) Sample signature block for attorney in fact:

22 *[Insert the Proposer's name]*

23 By: _____

24 Name: _____

25 Attorney in Fact: _____

FORM D

CONTRACT TIME/MILESTONE COMPLETION DEADLINES

**Washington State Department of Transportation
Design-Build Request for Proposal
***I-5/Yesler Way to NE 117th St. – Pavement, Deck, and Expansion Joints
Project*****

Name of Proposer: _____

Contract Time Bid: _____ (Notice to Proceed to Substantial Completion)

Milestones	Milestone Completion Deadlines
	Proposed Duration (Calendar Days from Notice to Proceed)
	A. _____ Calendar Days
A. Final Configuration Open to Traffic ⁽¹⁾	

Notes:

- 1) Final Configuration Open to Traffic is achieved when all lanes and ramps are in their final configuration, open to traffic, and only final striping and other incidental Work remain for Substantial Completion.

FORM E

**IDENTIFICATION OF PROPOSER, GUARANTORS, MAJOR PARTICIPANTS,
EARTHWORK SUBCONTRACTORS, STRUCTURES SUBCONTRACTORS
AND EACH SUBCONSULTANT AND SUBCONTRACTOR PERFORMING
20 PERCENT OR MORE OF THE DESIGN-BUILD WORK**

**Washington State Department of Transportation
Design-Build Request for Proposal ***I-5/Yesler Way to NE 117th St. – Pavement,
Deck, and Expansion Joints Project*****

NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, email)	ROLE IN ORGANIZATION (e.g., Proposer, Equity Owner in Proposer, Guarantor, Other Major Participant or Subcontractor)	State of Washington Contractor License and License Limit (provide copies)	Description of Work/Services

Proposer shall verify that all Subcontractors listed are confirmed (not suspended or debarred), in accordance with 48 CFR § 9.4, DOT Order 4200.5E and the WSDOT *Construction Manual*.

The undersigned hereby certifies that the above information is true and correct and that the Proposer has not entered into any substantive negotiations with any entity that falls within the definition of “Major Participant” resulting in an agreement to enter into any Subcontracts with respect to the Project, except for those listed above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing declaration is true and correct.

Signature: _____

Name: _____

Title: _____

FORM G

NON-COLLUSION DECLARATION

Failure to return this Declaration as part of the bid Proposal package will make the bid nonresponsive and ineligible for award.

I, by signing the Proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned Person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the Project for which this Proposal is submitted.
2. That by signing the signature page of this Proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.

NOTICE TO ALL BIDDERS

To report rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free hotline Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern Time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities shall use the hotline to report such activities.

The hotline is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

1 **FORM K**

2 **FORM OF GUARANTY**

3 **Washington State Department of Transportation**

4 **Design-Build Request for Proposal**

5 *****I-5/Yesler Way to NE 117th St. – Pavement, Deck, and Expansion Joints**
6 **Project*****

7 **THIS GUARANTY** (this “**Guaranty**”) is made as of _____,
8 _____, by _____, a _____ (“**Guarantor**”), in
9 favor of the **WASHINGTON STATE DEPARTMENT OF**
10 **TRANSPORTATION (WSDOT).**

11 **R E C I T A L S**

- 12 1. _____ (“**Design-Builder**”), and WSDOT are parties to that certain
13 Design-Build Contract dated _____ (“**Contract**”) pursuant to which the
14 Design-Builder has agreed to design and construct the Project. Initially capitalized
15 terms used herein without definition will have the meaning given such terms in
16 the Contract.
- 17 2. To induce WSDOT to (i) enter into the Contract; and (ii) consummate the
18 transactions contemplated thereby, Guarantor has agreed to enter into this
19 Guaranty.
- 20 3. Design-Builder is a _____ [*describe relationship with Guarantor*]. The
21 execution of the Contract by WSDOT and the consummation of the transactions
22 contemplated thereby will materially benefit Guarantor. Without this Guaranty,
23 WSDOT would not have entered into the Contract with Design-Builder.
24 Therefore, in consideration of WSDOT’s execution of the Contract and
25 consummation of the transactions contemplated thereby, Guarantor has agreed to
26 execute this Guaranty.

27 **NOW, THEREFORE**, in consideration of the foregoing Recitals, and for other
28 good and valuable consideration, the receipt and sufficiency of which are hereby
29 acknowledged, Guarantor agrees as follows:

- 30 1. **Guaranty.** Guarantor guarantees to WSDOT and its successors and assigns the
31 full and prompt payment and performance when due of all of the obligations of
32 the Design-Builder arising out of, in connection with, under or related to (i) the
33 Contract as amended or supplemented (and the documents executed or to be
34 executed in connection therewith), and (ii) each and every other document and
35 agreement executed by the Design-Builder in connection with the consummation
36 of the transactions contemplated by the Contract (the documents described in
37 clauses (i)-(ii) shall collectively be referred to herein as the “**Project Documents**”).
38 The obligations guaranteed pursuant to this Guaranty are collectively referred to
39 herein as the “**Guaranteed Obligations**.”
- 40 2. **Unconditional Obligations.** This Guaranty is a guaranty of payment and
41 performance and not of collection and is an absolute, unconditional, and

irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, whether or not recovery may be, or hereafter may become, barred by any statute of limitations or otherwise, and whether or not enforceable against the Design-Builder. If any payment made by the Design-Builder or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential, or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged, or otherwise affected by (i) any change in the Project Documents or the obligations thereunder, or any insolvency, bankruptcy, or similar proceeding affecting the Design-Builder, Guarantor, or their respective assets, and (ii) the existence of any claim or set-off which the Design-Builder has or Guarantor may have against WSDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity, or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefore or any other circumstances relating to the Guaranteed Obligations which might otherwise constitute a defense to the Guaranteed Obligations of this Guaranty.

3. **Independent Obligations.** Guarantor agrees that the Guaranteed Obligations are independent of the obligations of the Design-Builder and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not the Design-Builder is joined therein. WSDOT may maintain successive actions for other defaults of Guarantor. WSDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.
- a. Guarantor agrees that WSDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against the Design-Builder. Guarantor hereby waives the right to require WSDOT to proceed against the Design-Builder, to exercise any right or remedy under any of the Project Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement, or stipulation between the Design-Builder and WSDOT or their respective successors and assigns, with respect to any of the Project Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants, or conditions contained in any of the Project Documents or any modification thereof; (iii) any release of the Design-Builder from any liability with respect to any of the Project Documents; or (iv) any release or subordination of any collateral then held by WSDOT as security for the performance by the Design-Builder of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity, or enforceability of any of the Project Documents or the pursuit by WSDOT of any remedies which WSDOT either now has or may hereafter have with respect thereto under any of the Project Documents.

4. Liability of Guarantor. WSDOT may enforce this Guaranty upon the occurrence of a breach by the Design-Builder of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between WSDOT and the Design-Builder with respect to the existence of such a breach.

Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify, or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

WSDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge, or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of the Design-Builder, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner, or terms of payment of such financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto; (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate, or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations; (v) enforce and apply any security hereafter held by or for the benefit of WSDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that WSDOT may have against any such security, as WSDOT in its discretion may determine; and (vi) exercise any other rights available to it under the Project Documents.

1 This Guaranty and the obligations of Guarantor hereunder will be valid and
2 enforceable and will not be subject to any reduction, limitation, impairment,
3 discharge, or termination for any reason (other than infeasible performance in
4 full of the Guaranteed Obligations), including without limitation the occurrence of
5 any of the following, whether or not Guarantor will have had notice or knowledge
6 of any of them: (i) any failure or omission to assert or enforce or agreement or
7 election not to assert or enforce, or the stay or enjoining, by order of court, by
8 operation of law or otherwise, of the exercise or enforcement of, any claim or
9 demand or any right, power, or remedy (whether arising under the Project
10 Documents, at law, in equity, or otherwise) with respect to the Guaranteed
11 Obligations or any agreement or instrument relating thereto; (ii) any rescission,
12 waiver, amendment, or modification of, or any consent to departure from, any of
13 the terms or provisions (including without limitation provisions relating to events
14 of default) of the Project Documents or any agreement or instrument executed
15 pursuant thereto; (iii) WSDOT's consent to the change, reorganization, or
16 termination of the corporate structure or existence of the Design-Builder; (iv) any
17 defenses, set-offs, or counterclaims that the Design-Builder may allege or assert
18 against WSDOT in respect of the Guaranteed Obligations, including but not
19 limited to failure of consideration, breach of warranty, payment, statute of frauds,
20 accord and satisfaction, and usury; and (v) any other act or thing or omission, or
21 delay to do any other act or thing, which may or might in any manner or to any
22 extent vary the risk of Guarantor as an obligor in respect of the Guaranteed
23 Obligations.

- 24 5. **Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and
25 agrees not to assert or take advantage of: (i) any right to require WSDOT to
26 proceed against the Design-Builder or any other Person or to proceed against or
27 exhaust any security held by WSDOT at any time or to pursue any right or
28 remedy under any of the Project Documents or any other remedy in WSDOT's
29 power before proceeding against Guarantor; (ii) any defense that may arise by
30 reason of the incapacity, lack of WSDOT, death or disability of, or revocation
31 hereof by Guarantor, the Design-Builder, or any other Person or the failure of
32 WSDOT to file or enforce a claim against the estate (either in administration,
33 bankruptcy, or any other proceeding) of any such Person; (iii) any defense that
34 may arise by reason of any presentment, demand for payment or performance or
35 otherwise, protest or notice of any other kind or lack thereof; (iv) any right or
36 defense arising out of an election of remedies by WSDOT even though the
37 election of remedies, such as non-judicial foreclosure with respect to any security
38 for the Guaranteed Obligations, has destroyed the Guarantor's rights of
39 subrogation and reimbursement against the Design-Builder by the operation of
40 law or otherwise; (v) all notices to Guarantor, to the Design-Builder, or to any
41 other Person, including, but not limited to, notices of the acceptance of this
42 Guaranty or the creation, renewal, extension, modification, accrual of any of the
43 obligations of the Design-Builder under any of the Project Documents, or of
44 default in the payment or performance of any such obligations, enforcement of
45 any right or remedy with respect thereto, or notice of any other matters relating
46 thereto; (vi) any requirements of diligence or promptness on the part of WSDOT;

(vii) any defense arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Design-Builder or any other Person from any cause other than infeasible performance in full of the Guaranteed Obligations; (viii) any defense based upon any statute or rule of law which provides that the obligation of a Surety must be neither larger in amount nor in other respects more burdensome than that of the principal or which reduces a Surety's or Guarantor's obligation in proportion to the principal obligation; (ix) any defense based upon any act or omission of WSDOT which directly or indirectly results in or aids the discharge or release of the Design-Builder, Guarantor, or any security given or held by WSDOT in connection with the Guaranteed Obligations; and (x) any and all suretyship defenses under Applicable Law.

6. **Waiver of Subrogation and Rights of Reimbursement; Subordination.** Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right, or remedy which it may now have or may hereafter acquire against the Design-Builder that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right, or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right, or remedy of WSDOT against the Design-Builder, or any other security or collateral that WSDOT now has or hereafter acquires, whether or not such claim, right, or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Design-Builder or any shareholders, partners, members, or joint ventures of Design-Builder to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Design-Builder shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Design-Builder or any shareholders, partners, members, or joint ventures of Design-Builder to Guarantor without the prior written consent of WSDOT. Any payment by Design-Builder or any shareholders, partners, members, or joint ventures of Design-Builder to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for WSDOT.

7. **Cumulative Rights.** All rights, powers, and remedies of WSDOT hereunder will be in addition to and not in lieu of all other rights, powers, and remedies given to WSDOT, whether at law, in equity or otherwise.

8. **Representations and Warranties.** Guarantor represents and warrants that:

- a. it is a _____ duly [organized][formed], validly existing, and in good standing under the laws of the State of _____;
- b. it has all requisite [corporate][partnership][limited liability company] power and WSDOT to execute, deliver and perform this Guaranty;
- c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor;

- 1 d. this Guaranty has been duly executed and delivered and constitutes the legal,
2 valid, and binding obligation of Guarantor, enforceable against Guarantor in
3 accordance with its terms;
- 4 e. neither the execution nor delivery of this Guaranty nor compliance with or
5 fulfillment of the terms, conditions, and provisions hereof, will conflict with,
6 result in a material breach or violation of the terms, conditions, or provisions
7 of, or constitute a material default, an event of default, or an event creating
8 rights of acceleration, termination, or cancellation, or a loss of rights under
9 (1) [the certificate of incorporation or by-laws][certificate of limited
10 partnership or partnership agreement][certificate of formation or limited
11 liability company agreement] of Guarantor; (2) any judgment, decree, order,
12 contract, agreement, indenture, instrument, note, mortgage, lease,
13 governmental permit, or other authorization, right restriction, or obligation to
14 which Guarantor is a party or any of its property is subject or by which
15 Guarantor is bound; or (3) any Federal, State, or local law, statute, ordinance,
16 rule, or regulation applicable to Guarantor;
- 17 f. it now has and will continue to have full and complete access to any and all
18 information concerning the transactions contemplated by the Project
19 Documents or referred to therein, the financial status of the Design-Builder
20 and the ability of the Design-Builder to pay and perform the Guaranteed
21 Obligations;
- 22 g. it has reviewed and approved copies of the Project Documents and is fully
23 informed of the remedies WSDOT may pursue, with or without notice to the
24 Design-Builder or any other Person, in the event of default of any of the
25 Guaranteed Obligations;
- 26 h. it has made and so long as the Guaranteed Obligations (or any portion thereof)
27 remain unsatisfied, it will make its own credit analysis of the Design-Builder
28 and will keep itself fully informed as to all aspects of the financial condition
29 of the Design-Builder, the performance of the Guaranteed Obligations of all
30 circumstances bearing upon the risk of nonpayment or nonperformance of the
31 Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty
32 on the part of WSDOT to disclose any matter, fact, or thing relating to the
33 business, operations, or conditions of the Design-Builder now known or
34 hereafter known by WSDOT;
- 35 i. no consent, authorization, approval, order, license, certificate, or permit or act
36 of or from, or declaration or filing with, any governmental WSDOT or any
37 party to any contract, agreement, instrument, lease, or license to which
38 Guarantor is a party or by which Guarantor is bound, is required for the
39 execution, delivery, or compliance with the terms hereof by Guarantor, except
40 as have been obtained prior to the date hereof; and
- 41 j. there is no pending or, to the best of its knowledge, threatened action, suit,
42 proceeding, arbitration, litigation, or investigation of or before any
43 governmental Person which challenges the validity or enforceability of this
44 Guaranty.

1 9. **Governing Law.** The validity, interpretation, and effect of this Guaranty are
2 governed by and will be construed in accordance with the laws of the State of
3 Washington applicable to contracts made and performed in such State and without
4 regard to conflicts of law doctrines except to the extent that certain matters are
5 pre-empted by Federal law or are governed by the law of the jurisdiction of
6 organization of the respective parties.

7 10. **Entire Document.** This Guaranty contains the entire agreement of Guarantor
8 with respect to the transactions contemplated hereby, and supersedes all
9 negotiations, representations, warranties, commitments, offers, contracts, and
10 writings prior to the date hereof, written or oral, with respect to the subject matter
11 hereof. No waiver, modification, or amendment of any provision of this Guaranty
12 is effective unless made in writing and duly signed by WSDOT referring
13 specifically to this Guaranty, and then only to the specific purpose, extent, and
14 interest so provided.

15 11. **Severability.** If any provision of this Guaranty is determined to be unenforceable
16 for any reason by a court of competent jurisdiction, it will be adjusted rather than
17 voided, to achieve the intent of the parties, and all of the provisions not deemed
18 unenforceable will be deemed valid and enforceable to the greatest extent
19 possible.

20 12. **Notices.** Any communication, notice, or demand of any kind whatsoever under
21 this Guaranty shall be in writing and by electronic communication with return
22 receipt requested, email address as follows:

23 If to WSDOT: _____

24 _____
25 _____

26 Attn: _____
27 Telephone: _____

28 If to Guarantor: _____

29 _____
30 _____

31 Attn: _____
32 Telephone: _____

33 Either Guarantor or WSDOT may from time to time change its address for the
34 purpose of notices by a similar notice specifying a new address, but no such change
35 is effective until it is actually received by the party sought to be charged with its
36 contents.

37 All notices and other communications required or permitted under this Guaranty
38 which are addressed as provided in this Section are effective upon delivery.

- 1 13. **Captions.** The captions of the various Sections of this Guaranty have been
2 inserted only for convenience of reference and do not modify, explain, enlarge, or
3 restrict any of the provisions of this Guaranty.
- 4 14. **Construction of Guaranty.** Ambiguities or uncertainties in the wording of this
5 Guaranty will not be construed for or against any party, but will be construed in
6 the manner that most accurately reflects the parties' intent as of the date hereof.
- 7 15. **No Waiver.** Any forbearance or failure to exercise, and any delay by WSDOT in
8 exercising, any right, power, or remedy hereunder will not impair any such right,
9 power, or remedy or be construed to be a waiver thereof, nor will it preclude the
10 further exercise of any such right, power, or remedy.
- 11 16. **Bankruptcy; Reinstatement of Guaranty.** The obligations of Guarantor under
12 this Guaranty will not be reduced, limited, impaired, discharged, deferred,
13 suspended, or terminated by any proceeding, voluntary or involuntary, involving
14 the bankruptcy, insolvency, receivership, reorganization, liquidation, or
15 arrangement of the Design-Builder or by any defense which the Design-Builder
16 may have by reason of the order, decree, or decision of any court or
17 administrative body resulting from any such proceeding. WSDOT is not obligated
18 to file any claim relating to the Guaranteed Obligations if the Design-Builder
19 becomes subject to a bankruptcy, reorganization, or similar proceeding and the
20 failure of WSDOT to so file will not affect Guarantor's obligations under this
21 Guaranty.
- 22 17. **Attorneys' Fees.** Guarantor agrees to pay to WSDOT without demand reasonable
23 attorneys' fees and all expenses (including such fees and costs of litigation,
24 arbitration, and bankruptcy, and including appeals) incurred by WSDOT in
25 enforcing, collecting, or compromising any Guaranteed Obligation or enforcing or
26 collecting this Guaranty against Guarantor or in attempting to do any or all of the
27 foregoing.
- 28 18. **Consent to Jurisdiction.** Guarantor and WSDOT agree that any action or
29 proceeding to resolve a dispute between Guarantor and WSDOT concerning the
30 interpretation, application or enforcement of the terms of this Guaranty may only
31 be brought in the Superior Court of Thurston County, Washington pursuant to
32 State law. Guarantor and the WSDOT accepts for itself and in connection with
33 ITS properties, generally and unconditionally, the jurisdiction of the aforesaid
34 Court and waives any defense of forum non convenience. If not a resident of the
35 State, Guarantor must appoint and maintain an agent for service of process in the
36 State.

1 IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first
2 written above.

3 _____
4 At: _____

5 By: _____
6 _____

7 Name: _____
8 _____

9 Title: _____
10 _____

11 By: _____
12 _____

13 Name: _____
14 _____

15 Title: _____
16 _____
17

FORM L

UTILITY CERTIFICATION

(To be signed by authorized signatory(ies) of Proposer)

The undersigned certifies by signing and submitting this Proposal, to the best of his or her knowledge and belief, that the Proposal Price does not contain any monies, funds, costs and/or amounts of any kind or nature for the payment of Relocation of Utilities that are located in WSDOT Right of Way pursuant to franchise or permit. This certification does not apply in the case of a franchise or permit which contains a specifically designated right of reimbursement to the Utility Owner for Utility Relocation. In addition, this certification does not apply in the case of a Utility Relocation that is specifically identified as a line bid item in Request for Proposal Price Proposal – Schedule of Items.

Proposal documents that serve as a basis for the Proposal Price shall be subject to the audit requirements of Section 1-09.12 of the *General Provisions*.

A Proposal that does not include this certificate will be considered nonresponsive.

The undersigned shall require that the language of this certificate be in all lower tier contracts including but not limited to contracts with Subcontractors, vendors, and suppliers.

I hereby declare under penalty of perjury under the laws of the State that the foregoing is true and correct.

Signed: _____ Date: _____

Name: _____ Title: _____

FORM M

STIPEND AGREEMENT

*****I-5/Yesler Way to NE 117th St. – Pavement, Deck, and Expansion Joints
Project*****

**Design-Build Request for Proposal
Washington State Department of Transportation Project**

THIS STIPEND AGREEMENT (this “Agreement”) is made and entered into as of this _____, _____, by and between the Washington State Department of Transportation (WSDOT), and _____, a _____, (“Proposer”), with reference to the following facts:

Proposer is one of the entities prequalified to submit Proposals for the ***I-5/Yesler Way to NE 117th St. – Pavement, Deck, and Expansion Joints Project*** (the “Project”), and wishes to submit a Proposal in response to the Request for Proposal (RFP) for the Project issued by WSDOT.

- 1) The RFP requires each Proposer to include an executed Stipend Agreement in the Proposal, as a condition to the WSDOT’s obligation to pay a stipend to the Proposer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Services and Performance.** WSDOT hereby retains Proposer to prepare a responsive Proposal in response to the RFP. A “responsive” Proposal means a Proposal submitted by a qualified Proposer, which conforms in all material respects to the requirements of the RFP, as determined by WSDOT, and is timely received by WSDOT.

Subject to the provisions of the RFP documents regarding ownership of Escrow Proposal Documents (EPDs), all Work performed by Proposer and its team members pursuant to this Agreement shall be considered Work for hire, and the products of such work shall become the property of WSDOT without restriction or limitation on their use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Agreement.

Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the RFP.

2. **Term.** Unless otherwise provided herein, the provisions of this Agreement shall remain in full force and effect until execution of the Contract or until 1 year from the date of the execution of this Agreement, whichever occurs first. Services are authorized to commence effective upon the execution date of this Agreement and Proposal, and they are due by the dates set forth in the RFP.

3. **Compensation and Payment**

- 1 a. Compensation payable to Proposer for the services described herein shall be
2 in the amount of ***\$825,000***.
- 3 b. Payment will be owing hereunder only after receipt and approval of goods and
4 services, and will be made within 45 Calendar Days after award of the
5 Contract or the decision not to award a contract. The Proposer has completed
6 and included an invoice using Form N, *Stipend Invoice* provided in the ITP.
7 WSDOT will advise Proposer when said Contract is executed.
- 8 c. This Agreement involves the submission of a Proposal by Proposer that must
9 be received by the Proposal Due Date set forth in the RFP and determined
10 responsive by WSDOT as a condition of payment.

11 **4. Indemnities**

- 12 a. Subject to the limitations contained in Section 6 of this ITP, the Proposer shall
13 indemnify, protect and hold harmless WSDOT and its directors, officers,
14 employees, and contractors from, and Proposer shall defend at its own
15 expense, all claims, costs, expenses, liabilities, demands, or suits at law or
16 equity of, by or in favor of or awarded to any third party arising in whole or in
17 part from the negligence or willful misconduct of Proposer or any of its
18 agents, officers, employees, representatives, or Subcontractors or breach of
19 any of Proposer's obligations under this Agreement.
- 20 b. Furthermore, if any claim or suit is caused by or results from the concurrent
21 negligence of Proposer or its agents, officers, employees or representatives,
22 this indemnity provision shall be enforceable only to the extent of Proposer's
23 negligence or the negligence of Proposer's agents, officers, employees,
24 representatives, or Subcontractors.

25 **5. Compliance with Laws**

- 26 a. Proposer acknowledges that all written correspondence, exhibits, photographs,
27 reports, material, tapes, electronic disks, and other graphic and visual aids
28 submitted to WSDOT during this procurement process, excluding only the
29 EPDs, are, upon their receipt by WSDOT, the property of WSDOT and are
30 subject to the Washington Public Records Act.
- 31 b. Proposer shall comply with all Federal, State, and local laws, ordinances,
32 rules, and regulations applicable to the Work, and shall not discriminate on the
33 grounds of race, color, religion, sex, national origin, age, or disability in the
34 performance of Work under this Agreement.
- 35 c. Proposer covenants and agrees that it and its employees shall be bound by the
36 standards of conduct provided in Applicable Laws, ordinances, rules, and
37 regulations as they relate to Work performed under this Agreement. Proposer
38 agrees to incorporate the provisions of this paragraph in any Subcontract into
39 which it might enter with reference to the Work performed pursuant to this
40 Agreement.

1 **6. Early Termination**

2 This Agreement may be terminated by WSDOT in whole or in part at any
3 time termination is in the interest of WSDOT. No payment will be owing by
4 WSDOT in the event of any such termination, except as provided in paragraph
5 3a above.

6 **7. Assignment**

7 Proposer shall not assign this Agreement without WSDOT's prior written
8 consent. Any assignment of this Agreement without such consent shall be null
9 and void.

10 **8. Miscellaneous**

- 11 a. Upon request by the WSDOT Engineer, the Proposer shall, within
12 24 hours of such request, provide all electronic files used to create the
13 ATCs contained in the Proposal, including CADD, field survey, and Site
14 investigation files in a manner prescribed by the WSDOT Engineer.
- 15 b. Proposer and WSDOT agree that Proposer, its team members, and their
16 respective employees are not agents of WSDOT as a result of this Agreement.
- 17 c. All words used herein in the singular form shall extend to and include the
18 plural. All words used in the plural form shall extend and include the singular.
19 All words used in any gender shall extend to and include all genders.
- 20 d. This Agreement, together with the RFP, embodies the entire agreement of the
21 parties with respect to the subject matter hereof. There are no promises, terms,
22 conditions, or obligations other than those contained herein or in the RFP, and
23 this Agreement shall supersede all previous communications, representation, or
24 agreements, either verbal or written, between the parties hereto.
- 25 e. It is understood and agreed by the parties hereto that if any part, term, or
26 provision of this Agreement is by the courts held to be illegal or in conflict
27 with any State law, the validity of the remaining portions or provisions shall
28 not be affected, and the rights and obligations of the parties shall be construed
29 and enforced as if the Agreement did not contain the particular part, term, or
30 provisions to be invalid.
- 31 f. This Agreement shall be governed by and construed in accordance with State
32 law.

33 IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the
34 day and year first above written.

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11

**WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION**

By: _____

Name: _____

Title: _____

[Insert Proposer's name]

By: _____

Name: _____

Title: _____

FORM N
STIPEND INVOICE

Company: _____

Address: _____

Phone: _____

Fax: _____

Contact: _____

Email: _____

Invoice Date: _____

Payment Terms: Due within 45 Calendar Days after award of the Contract or after the decision not to award the Contract.

Invoice #: _____

Job Reference: _____

Bill To: ***Kyengo Ndile, PE, PMP
NWR Sno-King Design Office – Project Engineer
15700 Dayton Ave. N, Seattle, WA 98133***

Description	Price
Stipend payment in accordance with Form M, <i>Stipend Agreement</i> of the design-build Proposal for the ***I-5/Yesler Way to NE 117th St. – Pavement, Deck, and Expansion Joints*** Project	***\$825,000***
Subtotal	***\$825,000***
Sales Tax	N/A
Total	***\$825,000***

Make all checks payable to:

FORM Q

OPTION FOR USE OF WSDOT-OWNED PROPERTY

Washington State Department of Transportation

Design-Build Request for Proposal

Proposer Name: _____

Is the Proposer exercising the option to use any of the WSDOT-owned property shown in the *** *I-5 Potential Staging Areas*, Appendix R***, agreeing to the WSDOT-owned Property Terms and Conditions set forth in *** *WSDOT-Owned Property Terms and Conditions*, Appendix R*** of the Request for Proposal?

Check One: ☐ Yes ☐ No

Signed: _____ Date: _____

Name: _____ Title: _____

FORM R

**ORGANIZATIONAL CONFLICTS OF INTEREST
DISCLOSURE AND AVOIDANCE/NEUTRALIZATION/MITIGATION PLAN**

This disclosure statement outlines potential organizational conflicts of interest, either real or apparent, which as a result of activities or relationships with other Persons or entities, such Person or entity:

- Is unable or potentially unable to render impartial assistance or advice to the Washington State Department of Transportation (WSDOT)
- Is or might be otherwise impaired in its objectivity in performing the contract Work
- Has an unfair competitive advantage

SECTION I of this disclosure statement describes the potential organizational conflicts of interest, as described in WSDOT Secretary's Executive Order E 1059.00 and WSDOT *Organizational Conflicts of Interest Manual*. SECTION II of this disclosure statement describes the management plan for avoiding, neutralizing, or mitigating the potential organizational conflicts of interest as described in SECTION I of this disclosure statement. I acknowledge that WSDOT may require revisions to the management plan described in SECTION II of this disclosure statement prior to approving it, and that WSDOT has the right, in its sole discretion, to limit or prohibit my involvement in the Project as a result of the potential organizational conflicts of interest described in SECTION I of this disclosure statement.

SECTION Ia – Name of Person or Firm Potentially Conflicted

SECTION Ib – Current Project Name and Scope of Work

SECTION Ic – Future Project Name and Description of Potential Conflicts of Interest

SECTION II - Plan for Managing Potential Conflicts of Interest

Signed: _____ Date: _____

Name: _____ Title: _____

FORM S

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATION

To be signed by authorized Proposer representative

Name of Proposer: _____

My signature below certifies that, prior to submitting this Proposal, I have conducted an internal review of Proposer's current affiliations and have required Proposer's team members to identify potential, real, or perceived organizational conflicts of interest relative to the anticipated procurement, in accordance with the WSDOT Secretary's Executive Order E 1059.00 and WSDOT *Organizational Conflicts of Interest Manual*.

I further certify that Form(s) R, *Organizational Conflicts of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan* is/are provided, as listed below, for all potential, real, or perceived organizational conflicts of interest as defined in WSDOT *Organizational Conflicts of Interest Manual* for all Proposer's team members.

Signed: _____ Date: _____

Name: _____ Title: _____

List attachments by name of Person(s) or firm(s) potentially conflicted:

FORM T

Maintenance of Traffic Milestone Reduction in the Allowable Closures

See ITP Section 3.3.3 for instructions on how to fill out this form and the description of how this Form T will be used in evaluating the Proposal.

See *General Provisions* Section 1-08.9 for liquidated damages that will be assessed for failure to complete certain Work by the end of the closures filled in by the Proposer for on this form.

See Technical Requirements Section 2.22, *Maintenance of Traffic*, for specifications regarding how the closure reductions filled in by the Proposer on this form will be used to establish allowed closures.

	Maximum Allowed Reduction	Technical Credits Available per Reduction	Maximum Technical Credits Available	Proposed and Committed Closure Reduction
U1: One-Lane Weekend Closures	7	\$60,000	\$420,000	
U2: Two-Lane Weekend Closures	11	\$120,000	\$1,320,000	
U3: Three-Lane Weekend Closures	2	\$130,000	\$260,000	
V: Weekend Roadway Closures	10	\$500,000	\$5,000,000	
W: Southbound I-5 Linear Long-Term Closure	250	\$2,000	\$500,000	
X: Northbound I-5 Linear Long-Term Closure	250	\$2,000	\$500,000	
Z: Entrance and Exit Ramp Closures	50	\$20,000	\$1,000,000	

1 I have read and understand the relevant sections of the ITP, and the Contract
2 Documents related to the above listed reductions. I agree that proposed closure
3 reductions filled in on this form are contractually binding and will be included in
4 the Contract Form as a betterment.

5
6 Signed: _____ Date: _____

7 Printed Name: _____ Date: _____

FORM U

PROFESSIONAL LIABILITY INSURANCE CERTIFICATION

I, _____ [*Name*], am the _____ [*Company Officer's Title*] of _____ [*Design-Builder Company Name*], and am authorized to provide this certification.

I have reviewed the terms of the insurance requirements under WSDOT contract No. _____ (the "Contract"), and have also reviewed the terms of the professional liability insurance issued by _____ [*Name of Insurer*] under policy number _____ [*Policy Number*] (the "Professional Liability Insurance Policy"). I represent and warrant on behalf of _____ [*Design-Builder Company Name*] that the Professional Liability Insurance Policy meets the requirements of the Contract.

I declare under penalty of perjury the foregoing is true and correct to the best of my knowledge.

DATED this _____ [*Day*] day of _____ [*Month*], _____ [*Year*] at _____ [*City*], _____ [*State*], Washington.

_____ [*Name of Officer Signing Certification*]

FORM V

Disadvantaged Business Enterprise Performance (DBE) Plan Template

The following are the ITP instructions for completing DBE Performance Plan that is required to be submit as Appendix D in the Proposal.

Instructions for Completing DBE Performance Plan

SECTION 1 - INTRODUCTION

The Proposer shall provide the Project name, Proposer's name, Project Manager's name, and DBE Program Administrator name.

Affirm Commitment

- The Proposer shall provide written commitment of all Major Participates to comply with and advance the DBE Performance Plan.*

Education Programs, Training Programs, and Resources

- The Proposer shall describe in detail what education programs, training programs, and resources that are in place or will be in place to communicate to its employees the expected employee behaviors and performance relative to implementing the Federally funded Design-Build DBE Performance Plan.*

SECTION 2 SUBCONTRACTING PERCENTAGE

Table 2-1

- This table will be completed by WSDOT with the DBE Contract Goals. These are the minimum goals.*

Table 2-2

- The Proposer shall complete this table with their team's DBE commitment goals. Your team may increase these DBE commitment goals.
Note: the DBE Contract Goals listed in Table 2-1 are the minimum.*

SECTION 3 DIVERSE BUSINESS SUBCONTRACTORS

Table 3

- The Proposer shall completely fill out Table 3, "DBE Subcontractors" with any known DBE Commitments.*

- *The Proposer shall include the names of any DBE Commitments, if any, they committing to at the time of the proposal for this Project.*
- *The Proposer shall describe the scope of Work the DBE firms are committed to perform.*
- *The Proposer shall indicate the percentage this DBE Subcontractor will fulfil.*

If the Proposer has any DBE Commitments in Table 3 a written confirmation from each DBE firm shall be included with the DBE Performance Plan and submitted with their Proposal.

SECTION 4 DBE Program Administrator

DBE Program Administrator Experience

- *The Proposer shall provide a resume for the DBE Program Administrator in Appendix D.*
- *The Proposer shall describe in detail how the DBE Program Administrator will use their experience to identify, recruit and assisting DBE firms in developing relationships with Design-Builders.*

DBE Program Administrator Selection

- *The Proposer shall describe in detail how the chosen DBE Program Administrator work with the community.*

DBE Program Administrator Strategies

- *The Proposer shall describe in detail the strategies the DBE Program Administrator shall use to support the DBE Performance Plan.*
- *The Proposer shall clearly describe the strategies of how the DBE Program Administrator will work with, and be integrated within, the Design-Build team to meet or exceed the DBE Contract Goals.*
- *The Proposer shall include a list of the DBE Program Administrator responsibilities. For purposes of completing the DBE Performance Plan, the DBE Program Administrator responsibilities typically include, but are not limited to, the following:*
 - *Administration of the DBE Performance Plan and oversight of DBE Contract Goals attainment efforts*
 - *Outreach and networking with the DBE community throughout the life of the Contract*
 - *Outreach to qualified DBE firms to submit subcontract bids*
 - *Developing strategies for including DBE firms in the Project*
 - *Outreach to qualified DBES subcontractors when replacement of Subcontractors is required during the Contract execution*

- *Proposing effective strategies such as awarding DBE firms for certain scopes of work and conducting competitive subcontract awards for remaining scopes of work*
- *Working with estimators during the subcontract plan preparation and subcontract bidding*
- *Reviewing procurement processes, procurement documents, bid evaluation, and award decisions to ensure the consideration of DBE opportunities in each subcontract procurement*
- *Submitting and discussing updates monthly with the WSDOT Engineer, which at a minimum includes new commitments, progress to date, and projections*
- *Submitting required updates in WSDOT's reporting program and proactively moving the information through the system*
- *Ensuring DBE firms are performing a Commercially Useful Function*
- *Evaluating change orders for potential diverse business participation and facilitating outreach to DBE firms to encourage participation in the added Work*
- *Assisting DBE to successfully complete their scope of work on the Project*
- *Preparing and submitting monthly and quarterly DBE Performance Plan updates to WSDOT, describing current progress, and forecasting to Physical Completion*

DBE Program Administrator Availability

- *The Proposer shall confirm the DBE Program Administrator is full time.*

SECTION 5 PLAN TO MEET DBE CONTRACT GOALS

Outreach

- *The Proposer shall clearly state the proposed strategies and approaches to ensure outreach at all phases of the Project.*
- *The Proposer shall provide a description of proposed actions/strategies that will be used (on a regular basis) by the Proposer to solicit interest and bids from DBE Subcontractors/Subconsultants on Work opportunities arising from this Project include using the services of minority/women community organizations; minority/women contractors' groups; local, State, Federal minority/women business assistance offices and other organizations.*

Contracting Opportunities

- *The Proposer shall detail the methods your team will use during their procurement of work and to provide the DBE firms potential upcoming opportunities clearly and transparently.*

- *The Proposal shall include a schedule showing outreach, solicitation timelines, contractual deadlines, and work or production activities.*
- *The Proposal shall describe the tools and processes to support this effort.*
- *The Proposer needs to describe how they will negotiate in good faith with interested DBEs. It is the Proposer's responsibility to make portions of the Work available to DBEs and to select those portions of the Work, material needs, or both, to be consistent with the DBE availability.*

Methods to ensure DBE Firms are successfully integrated into the Project

- *The Proposer shall provide a description of proposed efforts to identify Contract Work items normally completed by the Proposer into economically feasible units (e.g., smaller tasks or quantities) with flexible timeframes for performance and delivery to facilitate DBE participation.*
- *The Proposer shall provide a description of efforts by the Proposer to provide DBEs with adequate information about the plans, specifications, and requirements.*
- *The Proposer shall provide a description of efforts by the Proposer to help remove barriers to DBE participation, such as waiving bonding requirements, Project Labor Agreement (PLA) requirements, et al.*
- *The Proposer shall provide a description of efforts by the Proposer to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.*
- *The Proposer shall provide a description of proposed procedures identifying how and why a DBE is deemed unqualified.*

SECTION 6 PLAN FOR MONITORING AND REPORTING OF COMMITMENTS

Reporting Processes and Steps

- *The Proposer shall describe the processes and steps that will be taken for reporting to WSDOT during the life of the Project.*
- *The Proposer shall provide a commitment to submit monthly reports.*

Future Potential commitments or opportunities

- *A list of projected DBE bid opportunities (scopes of Work, including a projected schedule) and any DBE Commitments to date his sub-section is not required to be completed during this phase.*

1 Reporting Experience and Capacity

- 2 • *The Proposer shall demonstrate experience and capacity to prepare reports in*
3 *real time.*

4
5 **SECTION 7 – PAST DBE PROJECT REFERENCES**

- 6 • *The Proposer shall provide project references including project name, contract*
7 *amount, contracting method, required goal percentage, achieved percentage, and*
8 *owner representative name and contact information (email address and phone*
9 *number).*

10
11 **Signature Section**

12 *By signing this DBE Performance Plan, the Proposer commitment to utilize DBEs, as outlined*
13 *in this DBE Performance Plan.*

Disadvantaged Business Enterprise Performance (DBE) Plan Template

SECTION 1 - INTRODUCTION

Project Name:	
Firm Name:	
Project Manager Name:	
DBE Program Administrator Name:	

Complete per the instructions. The DBE Performance Plan shall include section sub-heading to address the following:

Affirm Commitment [3]

Education Programs, Training Programs, and Resources

SECTION 2 – SUBCONTRACTING PERCENTAGES

Complete per the instructions.

DBE Contract Goals:
Table 2-1

DBE Categories	DBE Contract Goals
DBE Design	***16*** percentage
DBE Construction	***20*** percentage

Table 2-2

DBE Categories	Committed Goal
DBE Design	
DBE Construction	

SECTION 3 - DIVERSE BUSINESS SUBCONTRACTORS

Complete per the instructions.

Table 3
DBE Subcontractors

DBE Design Commitments	Describe SOW (One per row)	DBE Percentage
DBE Construction Commitments	Describe SOW (One per row)	DBE Percentage

Note – *Use more rows as necessary*

SECTION 4 – DBE Program Administrator

Complete per the instructions. The DBE Performance Plan shall include section sub-heading to address the following:

DBE Program Administrator Name	
Firm	
Email	
Number	

DBE Program Administrator Experience

DBE Program Administrator Selection

DBE Program Administrator Strategies

DBE Program Administrator Availability [1]?

SECTION 5 – PLAN TO MEET DBE CONTRACT GOALS

Complete per the instructions. The DBE Performance Plan shall include section sub-heading to address the following:

Outreach

Contracting Opportunities

Methods to ensure DBE Firms are successfully integrated into the Project

SECTION 6 – PLAN FOR REPORTING GOAL ATTAINMENT

Complete per the instructions. The DBE Performance Plan shall include section sub-headings to address the following:

Reporting Processes and Steps

Future Potential Commitments or Opportunities

Reporting Experience and Capacity

SECTION 7 – PAST DBE PROJECT REFERENCES

Project Name	Contract Amount	Contracting Method	Goal Percentage	Achieved Percentage	Owner Contact

By signing this DBE Performance Plan, the Proposer commitment to utilize DBEs, as outlined in this DBE Performance Plan.

Signed: _____ Date: _____

Name: _____ Title: _____